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Filing date: **09/23/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054171
Party	Plaintiff Valeritas, Inc.
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Date	09/23/2014
Attachments	Valeritas Motion to Compel (M0682846).PDF(362631 bytes ) Exhibit 1(a) (M0682840).PDF(2809590 bytes ) Exhibit 1(b) (redacted) (M0686986).PDF(2332337 bytes ) Exhibit 2 (redacted) (M0686989).PDF(980584 bytes ) Exhibit 3 (M0682842).PDF(131671 bytes ) Exhibit 4 (M0682845).PDF(1651251 bytes ) Exhibit 5 (M0682848).PDF(4483607 bytes ) Exhibit 6 (redacted) (M0686995).PDF(253518 bytes ) Exhibit 7 (M0682850).PDF(91893 bytes ) Exhibit 8 (M0682852).PDF(57855 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

_____	)	
Valeritas, Inc.,	)	In the matter of U.S. Reg. No. 3,895,432
	)	
Petitioner,	)	For the Mark: VGO
	)	
v.	)	Filing Date: March 2, 2010
	)	
VGo Communications, Inc.	)	Registration Date: December 21, 2010
	)	
Respondent.	)	Cancellation No.: 92054171
_____	)	

**REDACTED: PETITIONER’S MOTION TO COMPEL AND EXTEND DISCOVERY**

Pursuant to Rule 2.120(d)(2) of Trademark Rules of Practice, and Rule 37 of the Federal Rules of Civil Procedure, Petitioner, Valeritas, Inc., (“Valeritas”), by and through its undersigned attorneys and pursuant to Rule TMEP §§ 403.04, hereby moves the Board for an order (i) compelling Respondent, VGo Communications, Inc. (“VCI” or “Respondent”) to comply with its discovery obligations, and (ii) extend discovery through December 31, 2014. In support of this Motion, Petitioner states as follows:

**FACTUAL BACKGROUND**

Petitioner has made good faith efforts to obtain discovery responses from Respondent without the Board’s intervention but has been unsuccessful. Petitioner served a First Set of Requests for Admissions, Interrogatories, and Production of Documents and Things on December 21, 2011 and a Second Set of Requests for Admissions, Interrogatories, and Production of Documents and Things on August 29, 2012. Respondent’s responses were due on January 25, 2012 and October 4, 2012 respectively (30 days from the date of service plus five

additional days because the requests were served by mail; *see* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §§ 113.05 and 403.03; 37 C.F.R. §§ 2.119(c) and 2.120(a)).

Petitioner consented to a 30-day extension followed by a 14-day extension to respond to discovery requests for the first discovery requests. Thus, the responses to the first set were due on March 11, 2012. VCI’s responses and certificates of service are dated March 8, 2012 for the first set of discovery requests and October 2, 2012 for the second set of discovery. However, the responses were deficient as discussed in more detail below. Copies of all the relevant Interrogatories, Requests, and Responses are attached hereto as Exhibit 1.

On August 2, 2012, Petitioner sent a letter outlining the deficiencies in Respondent’s discovery requests to Respondent, and requested that Respondent remedy the deficiencies within ten business days. Respondent responded to the letter on August 22, 2012 and submitted an Amended Response to Interrogatory No. 2. See Exhibit 2.

After deposition of Tom Ryden under Rule 30(b)(6) and in anticipation of the deposition of Doug Geer, an independent consultant for Respondent, Petitioner sent a letter of deficiency on August 13, 2013 to Respondent requesting certain documentation that was clearly deficient after the Rule 30(b)(6) deposition. A second letter was sent on September 3, 2013 to follow up on the request. See Exhibit 3. While Respondent did produce the documentation on September 12, 2013 and September 16, 2013, it is clear that Respondent is and has been engaging in a pattern of not producing all relevant discoverable information.

Between October 2, 2012 and August, 2014, Petitioner and Respondent engaged in a good faith effort to settle the instant matter. During this time, Petitioner did not actively pursue the remedy of the deficiencies in Respondent’s discovery responses, including the scheduling of depositions of Ned Semonite, Respondent’s V.P. of Marketing for Respondent who was

identified as the person who selected VCI's mark, and Bern Terry, Respondent's V.P. of Sales for Respondent.<sup>1</sup>

After it was clear to Petitioner that the matter would not settle despite good faith attempts, on August 14, 2014 (four days after suspension of this proceeding was effectively lifted) Petitioner sent another letter outlining the deficiencies in Respondent's discovery requests to Respondent, and requesting that Respondent remedy the deficiencies within five business days. Respondent received the letter on August 18, 2014 and responded via email on August 27, 2014. Respondent received further correspondence on September 10, 2014, which Respondent anticipates receiving but has not yet received. See Exhibit 4.

Respondent's letter to supplement its responses was received today, which is the close of discovery. Notably, Respondent has produced no emails (with the exception of e-mail exchanges with Doug Greer) in response to Petitioner's Requests for Production prior to the close of discovery.

On August 13, 2014, Petitioner sought and received documents through discovery from PositiveID Corporation relating to its collaboration with VCI. See Exhibit 5. Respondent has denied that it collaborated with PositiveID Corporation, and has failed to produce documents relating to PositiveID Corporation. It is clear, however, that such documents exist (see Exhibit 5) and are discoverable. Respondent is baldly shirking its discovery obligations.

Not only are Respondent's discovery requests deficient, some of its responses are inconsistent with its promotional material available publicly. For example, Respondent deposed

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<sup>1</sup> Petitioner served several Notices of Depositions for both Bern Terry and Ned Semonite, which were never scheduled due to scheduling conflicts.

Thomas Ryden under Rule 30(b)(6) on June 24, 2013. His deposition contained the following series of questions and answers:

The questions Petitioner asked during the deposition<sup>2</sup> were based on an interview that was given by Mr. Ryden on June 15, 2013 entitled “Tom Ryden, VGo Cofounder & COO Talks About Robotic Telepresence and IBM Watson is Big Data”<sup>3</sup> hosted by Jim Collison. During this interview, which occurred nine days prior to the deposition, Mr. Ryden states VCI’s “primary applications are in education and healthcare” and “healthcare is really our largest market.” This statement is inconsistent to the statement made during the deposition. See Exhibit 6, p. 41-44.

### **ARGUMENT**

Pursuant to Trademark Rule 2.120(3) and Fed. R. Civ. P. 37(a), a party is entitled to file a motion to compel with the Board when an adverse party has failed to complete a discovery requirement in a TTAB proceeding. See, TBMP § 523.01, citing, inter alia, Jain v. Ramparts, Inc., 49 U.S.P.Q.2d 1429 (T.T.A.B. 1998); MacMillan Bloedel Ltd v. Arrow-M Corp., 203 U.S.P.Q. 127 (T.T.A.B. 1976). As discussed below, Respondent has failed to respond to Petitioner’s Interrogatories and Requests for Production prior to the close of discovery despite multiple attempts. Petitioner has been more than reasonable in granting Respondent time within which to respond to its requests. Accordingly, Petitioner respectfully requests that the Board issue an order compelling Respondent to respond fully to Petitioner’s Interrogatories and Requests, and that the Board grant additional time for discovery and reset the schedule for this

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<sup>2</sup> “Q. Is it a true statement that VCI’s primary applications are in education and health care? A. No Q. Is that a true statement? A. No. Q. Is it a true statement that healthcare is VCI’s largest market? A. I think it is a significant market. I think other than education growing this year I think last year it might have been the largest market but it varies. Q. Was health care VCI’s largest market earlier this month? A. Earlier this month? Q. Yes. A. No.

<sup>3</sup> See <http://www.youtube.com/watch?v=oBNhG80toM8>, accessed September 10, 2014

proceeding, in order to explore whatever information Respondent provides Petitioner as a result of the Board's order.

Petitioner has not received the supplemented discovery referenced in Respondent's letter dated September 10, 2014 and therefore has been unable to review them to see whether the responses are sufficient. Therefore, as the close of the (September 10, 2014), the following discovery requests remain deficient:

### **Interrogatories**

**Interrogatory No. 2** requests that VCI identify each and every good and/or service advertised, promoted, distributed, offered, and/or sold by VCI in the United States under or in connection with VCI's Mark, and for each such good or service, state: (a) The date of first use in commerce of VCI's Mark in connection with the identified good or service; (b) The sales by unit volume, by month and year, for each year since such sales began; (c) The gross revenue, by month and year, for each year since such sales began; (d) The approximate annual dollar amount expensed each year to date by VCI in advertising and promoting each identified good or service under VCI's Mark; and; (e) The approximate annual dollar amount VCI expects to be spent in advertising and promoting VCI's goods and/or services in connection with VCI's Mark for each year from 2012 through 2016. VCI initially objected to the Interrogatory on the grounds that the information that constitutes confidential or private business information.

VCI's response to this interrogatory is deficient in two ways. First, on August 22, 2012, VCI responded by providing the gross revenues for the years 2010 and 2011. VCI also provided its advertising and sales expenses for 2010 and 2011 (and projected expenses through 2015). VCI is required to supplement its response with information for the years 2012, 2013, and 2014. Second, VCI stated that it would provide documents and things responsive to Interrogatory 2(b) and (c) but has not produced these documents and things.

**Interrogatory No. 15** requests that VCI state all facts concerning VCI's relationship with companies in the field of treating, evaluating, diagnosing, and/or counseling patients with diabetes, including but not limited to PositiveID Corporation.

Respondent has objected to this Interrogatory by stating the term “relationship” is unclear. The term relationship is not unclear, and encompasses all companies VCI has or had a business relationship with. VCI’s response is deficient because it only addressed “ongoing” business relationships and not all companies it has or had a business connection with, including but not limited to the joint demonstration with PositiveID Corporation. See Exhibit 7.

**Interrogatory No. 16** requests VCI state all facts concerning the joint demonstration with PositiveID Corporation’s wireless communication device for diabetes management operating in conjunction with VCI’s robotic telepresence.

VCI’s response is deficient because it fails to state all facts, including but not limited how the demonstration was conducted or how PositiveID Corporation “invited” VCI to do a joint presentation. Further, it stated that the demonstration was “not in conjunction with PositiveID Corporation’s wireless communication device,” which is contradictory to the article found on VCI’s website, which states “[t]he companies will demonstrate PositiveID’s iglucose *wireless communication device* for diabetes management operating in conjunction with Vgo’s robotic telepresence...” and contradictory to documents produced in this litigation by PositiveID Corporation See Exhibit 7.

**Interrogatory No. 17** requests that VCI state all facts concerning VCI’s connection with ExL Pharmaceutical Conferences.

Upon information and belief, Respondent was connected with, attended, or otherwise engaged in a conference or similar exhibit. VCI objected to this Interrogatory by stating the term “connection with” is unclear, and as such, states that it has “no connection” with ExL Pharmaceutical Conferences. The phrase “connection with” is not unclear. VCI’s response is deficient because it fails to state whether VCI has been a sponsor or had an exhibit at any of

ExL's conferences or has in any way been involved with or participated in ExL Pharmaceutical Conferences.

### **Requests for Production of Documents and Things**

**Request for Production No. 1** seeks production of documents and things concerning VCI's selection, adoption and creation of VCI's Mark.

In its response on March 8, 2012, VCI responded that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. On August 22, 2012, VCI responded by claiming this request is outside the scope of the proceeding because Valeritas petitioned to cancel VCI's Standard Character Mark. VCI's VGO Design Mark is within the scope of this proceeding because the logo design appears in VCI's Specimen of Use. See Exhibit 8. Therefore, VCI must produce documents and things responsive to this Request for VCI's Mark, which includes VCI's VGO Design Mark, yet it has failed to do so.

While VCI provided some documentation concerning the creation of the logo design and correspondence with Doug Geer, it has failed to provide any other communication or documentation concerning the creation and selection of either the VGO Standard Character Mark or the VGO Design Mark.

**Request for Production No. 3** seeks production of documents and things concerning any formal or informal trademark searches or investigations concerning VCI's Mark.

VCI has produced only documents and things for VCI's Mark in standard characters. While VCI provided some documentation of formal or informal trademark searches or investigation of the VGO Standard Character Mark, it failed to provide such documentation for VCI's VGO Design Mark. Further, it failed to produce any correspondence or other

documentation concerning the trademark searches for either VCI's VGO Standard Character Mark or the VCI's VGO Design Mark.

**Request for Production No. 17** seeks production of documents and things concerning any advertisements VCI placed in any magazine or other publication in any format, whether print, online, or in any other format.

In its response dated March 8, 2012, VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. Then, on August 22, 2014, VCI responded by objecting to the production as burdensome and oppressive. It produced representative samples of its advertisements. VCI's response is insufficient because it did not produce all documents and things (including advertisements on the radio and/or television), and more specifically, all advertisements related to healthcare.

**Request for Production No. 18** seeks production of documents and things concerning any news or feature stories about VCI and/or products sold under VCI's Mark that have appeared in any magazine or other publication in any format, whether print, online, or in any other format.

VCI's response to this Request is insufficient. For example, VCI's product was featured in a Sports Illustrated article and while VCI produced the online version of the article, VCI failed to produce the printed version of the article, which may contain the VCI Design Mark. Further, VCI failed to produce any articles or press releases concerning its partnership with Positive ID Corporation. Finally, VCI failed to produce documents and things of any news or feature stories about VCI and/or products sold under the VCI Mark that have been covered by television and/or radio. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

On August 22, 2014, VCI responded by objecting to the production as burdensome and oppressive. It produced representative samples of its news and/or feature stories. VCI's response is insufficient because it did not comply with the request to produce all documents and things (including news and/or feature stories on the radio and/or television), and more specifically, all documents and things concerning any news or feature stories, which are related to healthcare.

**Request for Production No. 20** seeks production of documents and things concerning VCI's marketing plans for VCI's mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

On September 16, 2013, VCI provided its business plans for the years 2008 and 2011. VCI is required to supplement its response with information for the years 2012, 2013, and 2014, as well as provide any other documents and things concerning its marking plans.

**Request for Production No. 22** seeks production of documents and things concerning or identifying VCI's competitors in the marketplace.

VCI has responded that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. On August 22, 2014, VCI stated that it inadvertently omitted VGO 000664-670 from the production of documents. The document produced is an article entitled "The Boss is Robotic, and Rolling Up Behind You." While the article discusses robotic telepresence companies, it does not clearly identify VCI's competitors in the marketplace. As a result, VCI has still not complied with the Request for Production No. 22.

**Request for Production No. 29** seeks production of documents and things describing the channels of trade for the distribution of VCI's goods and/or services under VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

On August 22, 2012, VCI produced articles and information located on its website. While these documents may reference VCI's channels of trade for the distribution of VCI's goods, they do not describe the channels of trade for the distribution of VCI's goods and/or services under VCI's Mark. VCI must produce documents and things responsive to this Request, including without limitation information concerning medical organizations, hospitals, clinics, healthcare professionals, and/or organizations and institutions in which VCI's goods and/or services are used in the course of diagnostic, treatment, and/or care.

**Request for Production No. 32** seeks production of documents and things concerning contracts or agreements with affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, doctors, wholesalers, and/or retailers through whom VCI markets and sells its goods and services under VCI's Mark.

VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. On August 22, 2012, VCI responded that it "will provide documents they can find responsive to this request." Petitioner has not received any documents.

**Request for Production No. 37** seeks production of documents and things identifying each and every employee and/or agent of VCI's charged with responsibility for VCI's Mark and/or describing any such employee's or agent's duties with respect to VCI's Mark.

VCI has responded by stating that there is no such documentation. However, based on other discovery request responses, it is clear that Ned Semonite selected VCI's VGO Design Mark. See Exhibit 1.<sup>4</sup> Also, other discovery request responses demonstrate there were other employees involved in the selection of VCI's VGO Design Mark. See Exhibit 6, p. 16.<sup>5</sup>

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<sup>4</sup> See Registrant VGO Communications, Inc.'s Responses to Petitioner Valeritas, Inc.'s First Set of Interrogatories to Registrant; Response to Interrogatory No. 1, p. 4

<sup>5</sup> "Q. Who conceived the logo.

A. Well, I think it was a group effort.

Therefore, VCI is required to produce documents and things identifying these employees and/or agent that were involved in the process of selecting VCI's VGO Design Mark.

**Request for Production No. 46** seeks production of documents and things identified in VCI's Responses to Valeritas' Second Set of Interrogatories.

VCI has responded that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request. VCI has not produced documents identified in Valeritas' Second Set of Interrogatories for Interrogatory No. 9, Interrogatory No. 14, Interrogatory No. 15, Interrogatory No. 16, or Interrogatory 17.

#### **REQUEST FOR RELIEF**

Petitioner moves this Board for an order compelling Respondent within fifteen (15) days from the date of the Order to fully and completely respond to all of Petitioner's Interrogatories and Requests for Production, including each Interrogatory and each Request for Production, without objections regarding burden, vagueness, confidentiality, or relevance.

Petitioner further requests that, following the disposition of the Motion to Compel, the Board grants additional time for discovery and reset the schedule for this proceeding, in order to explore whatever information Respondent provides Petitioner referenced in Respondent's letter dated September 10, 2014 and as a result of the Board's order. There are extraordinary circumstances present here, namely Respondent's refusal to fulfill its discovery obligations, and

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Q. Tell me all the people involved in the group effort.

A. It was probably Grinnell, Time, myself, Ned, Doug Geer. I'm sure others contributed."

the parties' prior good faith attempts to settle this matter which merit additional time for discovery.

Date: September 10, 2014

VALERITAS, INC.

By its attorneys,

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By: /Sheri S. Mason/  
Sheri S. Mason  
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**CERTIFICATE OF SERVICE**

I, Sheri S. Mason, certify that a copy of the foregoing MOTION TO COMPEL AND EXTEND DISCOVERY was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via of first class mail, postage pre-paid, this 10th day of September 2014.

/Sheri S. Mason/  
Counsel for Valeritas, Inc.

# **EXHIBIT 1**

VALTM-ADV001



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December 21, 2011

**Via U.S. Mail**

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

**Re: Valeritas, Inc. v. VGo Communications, Inc.  
TTAB Cancellation No. 92054171  
Our Ref.: VALTM-ADV001**

Dear Counsel:

Enclosed and served on you please find:

- Valeritas' First Set of Interrogatories to VGo Communications, Inc.;
- Valeritas' First Set of Requests for Production of Documents and Things to VGo Communications, Inc.; and
- Valeritas' First Set of Requests for Admissions to VGo Communications, Inc.

I also write to address the discussion we had during the parties' discovery conference. We were surprised that VGo Communications, Inc. ("VCI") took the position that the parties' respective marks are not similar when in fact, your client's typed drawing registration for the V-GO mark is identical to Valeritas, Inc.'s typed drawing application for the V-GO mark.

We also pointed out that the parties' respective logos are nearly identical. For ease of reference, the logos are reproduced below.



As you can see, both marks consist of a large capital letter "V" followed by the word "GO" in smaller caps. In addition, both marks contain a horizontal green line element with a spherical shape on the right-hand side, which suggests movement from left to right. During the discovery conference, you argued that VCI's mark as used in commerce is irrelevant to the analysis in

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
December 21, 2011  
Page 2

Trademark Trial and Appeal Board ("TTAB") proceedings when the applications and/or registrations at issue are for typed drawings.

We informed you that that is not the case. Rather, it is appropriate for the TTAB to consider how a mark is actually used in commerce when evaluating competing marks for likelihood of confusion purposes. We offered to provide you with some cases supporting this proposition of law, and you encouraged us to do so.

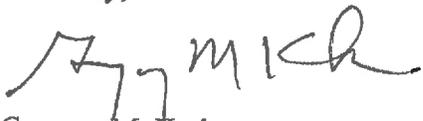
As Professor McCarthy explains, "As to format, if applicant's mark is shown in the application in typed letters, it is appropriate to compare actual specimens of applicant's use with opposer's format usage." J. Thomas McCarthy, 3 *McCarthy on Trademarks and Unfair Competition* § 20:15. The courts have followed this rule of law for at least 40 years. In *Phillips Petroleum Company v. C.J. Webb, Inc.*, 170 U.S.P.Q. 35 (C.C.P.A. 1971), Phillips opposed applicant's CRC MARINE FORMULA 6-66 mark based on an alleged likelihood of confusion with Phillips' 66 mark. *Id.* at 35.

Although applicant's mark in typed drawing form was significantly different than opposer's mark, the Federal Circuit's predecessor court examined the specimens of use submitted with the application. The court noted that because the application was submitted in typed capital letters, the "application is not limited to the mark depicted in any special form. In trying to visualize what other forms the mark might appear in, we are aided by the specimens submitted with Webb's application as illustrating the 'mark as actually used.'" *Id.* at 36. It was clear from the specimen that the "66" portion of applicant's mark was more prominent than the other portions of the mark. As a result, the court found a likelihood of confusion and reversed the TTAB's decision dismissing the opposition.

Moreover, the Federal Circuit has recently reinforced the validity of the *Phillips* case. See *Citigroup Inc. v. Capital City Bank Group, Inc.*, 98 U.S.P.Q.2d 1253, 1259 (Fed. Cir. 2011) ("As explained in *Phillips*, illustrations of the mark as actually used may assist the T.T.A.B. in visualizing other forms in which the mark might appear").

Accordingly, the uncanny resemblance of VCI's design mark to Valeritas' design mark further reinforces the conclusion that the marks are confusingly similar, and we thus continue to believe that the parties would be best served by VCI's adoption of a new mark that will not cause consumer confusion.

Sincerely,



Gregory M. Krakau

Not admitted to the State Bar of Massachusetts  
Admitted to the State Bar of California



act on its behalf, as the context hereof may require.

3. "Document" means any item in the possession, custody, or control of VCI upon which intelligence or information is recorded or from which intelligence or information can be obtained, including by way of illustration, but not by way of limitation, the following items: samples of VCI's goods, letters, reports, communications, including internal company communications; preliminary notes and drafts; telegrams; telexes; faxes; memoranda; summaries of records of telephone conversations; magnetic media from which audible or visual information can be obtained, such as tapes, discs, or the like; diaries; graphs; notebooks; charts; plans; artists' drawings; positive or negative prints of photographic pictures, motion or still, including excised frames of motion pictures; minutes of records of conferences and meetings, including meetings of directors, executive committees and financial committees; lists of persons attending meetings or conferences; expressions or statements of policy; reports or summaries of investigations, opinions, or reports of consultants; non-privileged communications with attorneys; records of summaries of negotiations; contracts and agreements; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of any documents; and revisions of drafts of any documents. For purposes of these Interrogatories, any such Document bearing on any sheet or side thereof any marks of any kind, such as initials, stamped indicia, comments or notations, which was not part of the originally created Document, is to be considered and identified as a separate Document.

4. "Trademark" or "Mark" means trademark, service mark, or design mark.

5. “VCI’s Mark” means any mark allegedly owned by VCI that includes the word V-GO in any form, including but not limited to the V-GO mark as depicted in the following design:



for use on “robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems.”

6. “Valeritas’ Mark” means Valeritas’ V-GO mark as used on “[m]edical apparatus, namely, infusion and injection devices for administering drugs,” including but not limited to the V-GO mark as depicted in the following design:



7. Where identification of any Document is required by use of the word “Identify,” such identification should be sufficient to support a request for the production of the Document under Rule 34 of the Federal Rules of Civil Procedure, and should include by way of illustration but without limitation the following information, even if VCI intends to object to the production of said Document:

- (a) The type of the Document, i.e., whether it is a letter, memorandum, report, drawing, chart, etc.;
- (b) The general subject matter of the Document;
- (c) The name of the creator of the Document;
- (d) Any numerical designation appearing on the Document, such as a drawing number, sample number or file references; and

- (e) If the Document is not in VCI's possession, custody, or control, the identity, as defined herein below, of the person or entity having possession, custody or control of said Document.

VCI may, in lieu of identification, at the time VCI serves its answers to these Interrogatories, mail to Valeritas the original of such Document, or a legible copy or photograph of such Document, suitably labeled and marked to show to which Interrogatory each Document is being produced in lieu of identification.

8. Where the identification of any person is required by use of the word "Identify," such identification should be sufficient to identify the person in a notice of taking the deposition of such person, and should include without limitation the following information:

- a) full name;
- b) business address;
- c) job title;
- d) employer or professional affiliations; and
- e) home address.

9. Where the identification of an entity is required by use of the word "Identify," such identification should be sufficient to identify the entity, and should include without limitation the following information:

- (a) The full name or title;
- (b) Principal place of business;
- (c) Nature or type of entity;
- (d) The state of incorporation or registration; and
- (e) The principal business conducted by such persons or entities.

10. If VCI is aware of any Document that once existed but has been destroyed, VCI is requested to state when the Document was destroyed, who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

11. These Interrogatories shall be deemed continuous and VCI shall be obligated to change, supplement and amend its answers hereto as prescribed by Rule 26(e) of the Federal Rules of Civil Procedure.

12. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to bring within the Interrogatories all information which might otherwise be construed as outside their scope.

If VCI objects to any interrogatory or request for production of documents based on a claim of privilege or a claim that disclosure invades attorney work product, state the nature of the privilege claimed and for each communication, document, or tangible thing over which a privilege is claimed provide as much of the following information as is not encompassed by the privilege: its type; its general subject matter and purpose; its date; the names of persons making and receiving the communication, document, or tangible thing or a copy thereof, or if the communication was oral, of those present when it was made; their relationship to the author or speaker; and any other information upon which you may rely to support your claim of privilege or other immunity from discovery.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

State all facts concerning VCI's adoption of VCI's Mark, including but not limited to:

- (a) identifying all persons who were involved in the selection of the mark and stating each such person's role in the selection of the mark;

- (b) identifying the date or dates upon which the mark was selected; and
- (c) stating whether any trademark searches were conducted in connection with the adoption of the mark, and if so, identifying the person(s) who conducted the search(es), whether or not such person(s) were attorneys, and identifying any search reports that were generated as a result of the search(es).

**INTERROGATORY NO. 2:**

Identify each and every good and/or service advertised, promoted, distributed, offered, and/or sold by VCI in the United States under or in connection with VCI's Mark, and for each such good or service, state:

- (a) The date of first use in commerce of VCI's Mark in connection with the identified good or service;
- (b) The sales by unit volume, by month and year, for each year since such sales began;
- (c) The gross revenue, by month and year, for each year since such sales began;
- (d) The approximate annual dollar amount expended each year to date by VCI in advertising and promoting each identified good or service under VCI; Mark; and
- (e) The approximate annual dollar amount VCI expects to be spent in advertising and promoting VCI's goods and/or services in connection with VCI's Mark for each year from 2012 through 2016.

**INTERROGATORY NO. 3**

Identify all persons with knowledge of:

- (a) Valeritas's use of Valeritas' Mark;
- (b) any likelihood of confusion between VCI's Mark and Valeritas's Mark; and

- (c) any actual confusion between VCI and/or VCI's Mark on the one hand and Valeritas and/or Valeritas' Mark on the other hand;

and for each such person, state all facts and circumstances concerning that person's knowledge.

**INTERROGATORY NO. 4**

State all facts concerning VCI's class of customers—whether desired and/or actual—specifically with respect to demographic information for the customers (age, sex, income level, interests, and any other characteristics), how the customers purchased VCI's products, and the uses to which the customers put VCI's products.

**INTERROGATORY NO. 5**

State all facts concerning VCI's channels of trade, including but not limited to identifying all channels through which VCI's goods are sold, whether online, through retail outlets (and if so, identify the retail outlets), trade shows, consumer shows, through the medical and/or health care profession, and/or otherwise, and listing the percentages of VCI's sales, by unit and dollar volume, for each such channel of trade.

**INTERROGATORY NO. 6**

State all facts concerning VCI's attendance at trade and consumer shows, identifying all shows attended, the dates upon which the shows took place, the sales made, by unit and dollar volume, at each show attended, and the dates upon which future shows that VCI plans to attend are scheduled to take place.

**INTERROGATORY NO. 7**

Identify representative specimens of advertisements, brochures, catalogs, news and/or feature stories, press releases, and/or promotional materials evidencing VCI's use of VCI's Mark in connection with each and every good and service upon which VCI's Mark has been

used, and state the respective dates and publications of the media in which the material appeared.

**INTERROGATORY NO. 8**

Identify each and every instance in which any person has claimed to be deceived, mistaken or confused regarding the source of VCI's goods or services offered under or in connection with VCI's Mark based on confusion with Valeritas and/or Valeritas' Mark, and identify each such person, the date upon which the claim of confusion was made, the employees and/or agents of VCI who have the most knowledge any such instance, and for each such person, state whether the person's alleged confusion resulted in a decision to purchase one party's goods in the mistaken belief that the other party was the source of the goods.

**INTERROGATORY NO. 9**

State all facts concerning how VCI's goods and/or services are marketed, promoted, offered, and/or sold to the medical and/or health care communities, describing whether and how VCI's goods are marketed, promoted, offered, and/or sold to doctors, hospitals, health insurers, and/or patients.

**INTERROGATORY NO. 10**

State all facts concerning any communications between Ned Semonite and any doctors, including but not limited to Richard E. Pratley, M.D., concerning VCI, VCI's Mark, and/or VCI's goods and/or services, identifying the date of any and all such communications and describing the content of such communications.

**INTERROGATORY NO. 11**

Identify by uniform resource locator (URL) and/or domain name each and every website

owned, operated, or used by VCI to advertise, promote, and/or sell any goods or services in connection with VCI's Mark, and identify all persons with knowledge of VCI's advertising, promotion, and/or sale of goods and services via the Internet.

**INTERROGATORY NO. 12**

For each request for admission set forth in Valeritas's First Set of Requests for Admissions that VCI does not unqualifiedly admit, state the factual basis for the denial or qualified admission, and identify all persons with knowledge of the facts described.

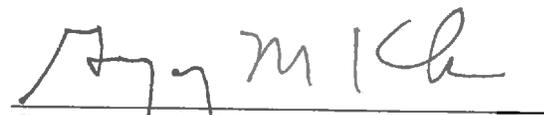
Date: December 21, 2011

VALERITAS, INC.,

By its attorneys

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By:



Gregory M. Krakau

Thomas F. Dunn

Sheri S. Mason

1601 Trapelo Road, Suite 205

Waltham, MA 02451

Tel: (781) 622-5930

Fax: (781) 622 5933

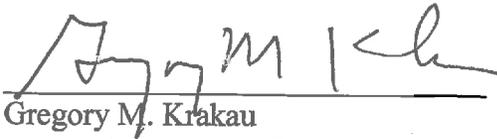
Email: [gkrakau@mbbp.com](mailto:gkrakau@mbbp.com)

**CERTIFICATE OF SERVICE**

I, Gregory M. Krakau, certify that a copy of the foregoing VALERITAS, INC.'S FIRST SET OF INTERROGATORIES TO VGO COMMUNICATIONS, INC. was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 21st day of December, 2011.



Gregory M. Krakau

Attorney for Petitioner Valeritas, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	In the matter of U.S. Reg. No. 3,895,432
	)	
Petitioner,	)	For the Mark: VGO
	)	
v.	)	Filing Date: March 2, 2010
	)	
VGo Communications, Inc.	)	Registration Date: December 21, 2010
	)	
Respondent,	)	Cancellation No.: 92054171
	)	

**VALERITAS, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS AND THINGS TO VGO COMMUNICATIONS, INC.**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Petitioner Valeritas, Inc. ("Valeritas") hereby serves its First Set of Requests for Production of Documents and Things on Respondent VGo Communications, Inc. ("VCI"), and requests that VCI produce copies of the following Documents and Things which are in VCI's possession, custody, or control. VCI shall produce such Documents and Things to Gregory M. Krakau, Morse, Barnes-Brown, & Pendleton, P.C., 1601 Trapelo Road, Reservoir Place, Suite 205, Waltham, Massachusetts 02451, within thirty (30) days of service of these requests, or at such other time and place as may be mutually agreed upon by the parties, as provided in the Federal Rules of Civil Procedure.

These requests are continuing in nature, and in the event VCI becomes aware of or otherwise acquires possession, custody or control of additional responsive documents, VCI must promptly produce such additional documents for inspection and copying, in accordance with the Federal Rules of Civil Procedure.

## **DEFINITIONS AND INSTRUCTIONS**

For purposes of these requests for production of documents and things, the definitions and instructions provided in Valeritas' First Set of Interrogatories are incorporated herein.

### **DOCUMENTS AND THINGS TO BE PRODUCED**

#### **REQUEST FOR PRODUCTION NO. 1**

Produce all Documents and Things concerning VCI's selection, adoption and creation of VCI's Mark.

#### **REQUEST FOR PRODUCTION NO. 2**

Produce all Documents and Things concerning VCI's research regarding registrability and clearance of VCI's Mark.

#### **REQUEST FOR PRODUCTION NO. 3**

Produce all Documents and Things concerning any formal or informal trademark searches or investigations concerning VCI's Mark.

#### **REQUEST FOR PRODUCTION NO. 4**

Produce all Documents and Things concerning any market studies, surveys, focus groups, or other studies concerning the use or advice against use of VCI's Mark.

#### **REQUEST FOR PRODUCTION NO. 5**

Produce all Documents and Things concerning any other trademark VCI considered adopting for use in association with any of its goods or services.

#### **REQUEST FOR PRODUCTION NO. 6**

Produce all Documents and Things identifying all goods and services on or in connection with which VCI uses VCI's Mark.

**REQUEST FOR PRODUCTION NO. 7**

Produce two samples of each and every good upon which VCI uses VCI's Mark.

**REQUEST FOR PRODUCTION NO. 8**

Produce all Documents and Things concerning VCI's corporate formation, including but not limited to Articles of Incorporation, By-Laws, and any amendments thereto.

**REQUEST FOR PRODUCTION NO. 9**

Produce all Documents and Things concerning VCI's corporate ownership structure.

**REQUEST FOR PRODUCTION NO. 10**

Produce all Documents and Things concerning U.S. Trademark Registration No. 3,895,432 for the V-GO mark for use on "robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems."

**REQUEST FOR PRODUCTION NO. 11**

Produce all Documents and Things concerning U.S. Trademark Application Serial No. 77/752,694 for the mark V-GO for use on "[m]edical apparatus, namely, infusion and injection devices for administering drugs."

**REQUEST FOR PRODUCTION NO. 12**

Produce all Documents and Things concerning U.S. Trademark Application Serial No. 77/752,697 for the mark V-GO DISPOSABLE INSULIN DELIVERY & Design for use on "[m]edical apparatus, namely, infusion and injection devices for administering drugs."

**REQUEST FOR PRODUCTION NO. 13**

Produce all Documents and Things sufficient to establish VCI's annual sales of each and every product or service upon which VCI's Mark is used, by both dollar amount and unit volume.

**REQUEST FOR PRODUCTION NO. 14**

Produce all Documents and Things sufficient to establish VCI's annual advertising and promotional expenditures for each and every product or service upon which VCI's Mark is used.

**REQUEST FOR PRODUCTION NO. 15**

Produce all Documents and Things identifying the media used by VCI to advertise and/or promote VCI's Mark, including but not limited to all Documents and Things identifying the television stations, radio stations, newspapers, magazines, Internet sources, and all other media used by VCI to promote its alleged V-GO mark.

**REQUEST FOR PRODUCTION NO. 16**

Produce printouts of all web pages from every website operated or used by VCI to advertise, promote and/or sell goods bearing VCI's Mark, including current and archival web pages.

**REQUEST FOR PRODUCTION NO. 17**

Produce all Documents and Things concerning any advertisements VCI placed in any magazine or other publication in any format, whether print, online, or in any other format

**REQUEST FOR PRODUCTION NO. 18**

Produce all Documents and Things concerning any news or feature stories about VCI and/or products sold under VCI's Mark that have appeared in any magazine or other publication in any format, whether print, online, or in any other format.

**REQUEST FOR PRODUCTION NO. 19**

Produce all advertising and/or promotional materials for each and every one of VCI's goods and services offered or sold under VCI's Mark.

**REQUEST FOR PRODUCTION NO. 20**

Produce all Documents and Things concerning VCI's marketing plans for VCI's Mark.

**REQUEST FOR PRODUCTION NO. 21**

Produce all Documents and Things concerning any advertising and/or marketing agencies used by VCI in promoting its goods or services, including but not limited to any and all agreements and/or correspondence with such advertising and/or marketing agencies.

**REQUEST FOR PRODUCTION NO. 22**

Produce all Documents and Things concerning or identifying VCI's competitors in the marketplace.

**REQUEST FOR PRODUCTION NO. 23**

Produce all Documents and Things concerning or identifying Valeritas' competitors in the marketplace.

**REQUEST FOR PRODUCTION NO. 24**

Produce all Documents and Things concerning the circumstances under which VCI first learned of Valeritas and/or Valeritas' Mark.

**REQUEST FOR PRODUCTION NO. 25**

Produce all Documents and Things concerning any and all third parties who have attempted to enforce trademarks against VCI based on VCI's alleged use of VCI's Mark, including but not limited to any and all cease and desist letters, trademark oppositions, trademark cancellation proceedings, litigations filed in state and/or federal court, and any other efforts by any third party to enforce one or more of its trademarks against VCI based on VCI's alleged use of VCI's Mark.

**REQUEST FOR PRODUCTION NO. 26**

Produce all Documents and Things concerning any license agreements or negotiations concerning VCI's Mark, whether or not any such agreement was reached, and whether granted by VCI to a third party or granted by a third party to VCI, including but not limited to agreements, drafts of agreements, and correspondence between VCI and any third party concerning such a license.

**REQUEST FOR PRODUCTION NO. 27**

Produce all Documents and Things concerning any assignments concerning VCI's Mark, whether such an assignment was granted by VCI to a third party, granted by a third party to VCI, or was an intermediary assignment, including but not limited to agreements, drafts of agreements, and correspondence between VCI and any third party concerning such an assignment.

**REQUEST FOR PRODUCTION NO. 28**

Produce all Documents and Things concerning any descriptions of the class of customers to whom VCI offers or sells its goods and/or services.

**REQUEST FOR PRODUCTION NO. 29**

Produce all Documents and Things concerning descriptions of the channels of trade for distribution of VCI's goods and/or services under VCI's Mark.

**REQUEST FOR PRODUCTION NO. 30**

Produce all Documents and Things sufficient to demonstrate the geographic scope of VCI's use of VCI's Mark within the United States.

**REQUEST FOR PRODUCTION NO. 31**

Produce all Documents and Things concerning any plans to expand the present use of

VCI's Mark to other products or services, to other geographic areas, or to sell through other channels of trade.

**REQUEST FOR PRODUCTION NO. 32**

Produce all Documents and Things concerning contracts or agreements with affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, doctors, wholesalers, and/or retailers through whom VCI markets and sells its goods and services under VCI's Mark.

**REQUEST FOR PRODUCTION NO. 33**

Produce all Documents and Things concerning any instances in which a person has been confused, deceived, or mistaken about the source of VCI's goods or services, believing them to be Valeritas', or vice versa.

**REQUEST FOR PRODUCTION NO. 34**

Produce all Documents and Things concerning any instances in which a person has been confused, deceived, or mistaken believing that VCI and Valeritas were a single entity or related entities.

**REQUEST FOR PRODUCTION NO. 35**

Produce all Documents and Things concerning any communications between Ned Semonite and any doctors, including but not limited to Richard E. Pratley, M.D., concerning VCI, VCI's Mark, and/or VCI's goods and/or services.

**REQUEST FOR PRODUCTION NO. 36**

Produce all Documents and Things concerning any instances in which a person has been confused, deceived, or mistaken believing that Valeritas sponsors or endorses VCI or its products, or vice versa.

**REQUEST FOR PRODUCTION NO. 37**

Produce all Documents and Things identifying each and every employee and/or agent of VCI charged with responsibility for VCI's Mark and/or describing any such employee's or agent's duties with respect to VCI's Mark.

**REQUEST FOR PRODUCTION NO. 38**

Produce all Documents and Things concerning Valeritas.

**REQUEST FOR PRODUCTION NO. 39**

Produce all Documents and Things concerning information on market share, consumer recognition, fame and reputation of VCI's Mark.

**REQUEST FOR PRODUCTION NO. 40**

Produce all Documents and Things concerning settlement negotiations between VCI and Valeritas.

**REQUEST FOR PRODUCTION NO. 41**

Produce all Documents and Things identified in VCI's Responses to Valeritas's First Set of Interrogatories.

**REQUEST FOR PRODUCTION NO. 42**

With respect to Valeritas, Inc.'s First Set of Requests for Admissions to VGo Communications, Inc., for each request that is not unqualifiedly admitted, produce all Documents and Things that support VCI's reasons for not unqualifiedly admitting the request.

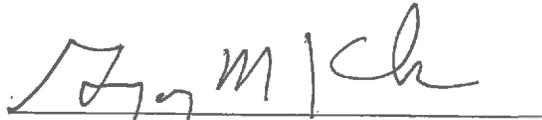
Date: December 21, 2011

VALERITAS, INC.,

By its attorneys

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By:



Gregory M. Krakau

Thomas F. Dunn

Sheri S. Mason

1601 Trapelo Road, Suite 205

Waltham, MA 02451

Tel: (781) 622-5930

Fax: (781) 622 5933

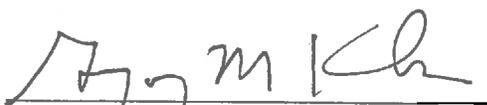
Email: [gkrakau@mbbp.com](mailto:gkrakau@mbbp.com)

**CERTIFICATE OF SERVICE**

I, Gregory M. Krakau, certify that a copy of the foregoing VALERITAS, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO VGO COMMUNICATIONS, INC. was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 21st day of December, 2011.



Gregory M. Krakau  
Attorney for Petitioner Valeritas, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	In the matter of U.S. Reg. No. 3,895,432
	)	
Petitioner,	)	For the Mark: VGO
	)	
v.	)	Filing Date: March 2, 2010
	)	
VGo Communications, Inc.	)	Registration Date: December 21, 2010
	)	
Respondent,	)	Cancellation No.: 92054171
	)	

**VALERITAS, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS  
TO VGO COMMUNICATIONS, INC.**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Petitioner Valeritas, Inc. ("Valeritas") requests that Respondent VGo Communications, Inc. ("VCI") respond by admitting the truthfulness of the matters set forth below, within thirty (30) days of service.

**DEFINITIONS AND INSTRUCTIONS**

For purposes of these requests for admissions, the definitions and instructions provided in Valeritas' First Set of Interrogatories are incorporated herein. In addition:

If VCI objects to any request for admission, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why VCI cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that VCI qualify an answer or deny only a part of the matter of which an admission is requested, VCI shall specify so much of the request as is true and qualify or deny the remainder.

VCI may not give lack of information or knowledge as a reason for failure to admit or

deny unless it states that it has made reasonable inquiry and that information known or readily obtainable by it is insufficient to enable it to admit or deny.

**MATTERS TO BE ADMITTED**

**REQUEST FOR ADMISSION NO. 1**

Admit that VCI's Mark is identical to Valeritas' Mark.

**REQUEST FOR ADMISSION NO. 2**

Admit that the mark depicted in VCI's U.S. Trademark Registration No. 3,895,432 for the V-GO mark is identical to the mark depicted in Valeritas' U.S. Trademark Application Ser. No. 77/752,694 for the V-GO mark.

**REQUEST FOR ADMISSION NO. 3**

Admit that VCI's goods are closely related to Valeritas' goods.

**REQUEST FOR ADMISSION NO. 4**

Admit that Valeritas offers goods and services in the medical field.

**REQUEST FOR ADMISSION NO. 5**

Admit that Valeritas offers products for use in the treatment of patients with diabetes.

**REQUEST FOR ADMISSION NO. 6**

Admit that Valeritas markets its goods and services to doctors.

**REQUEST FOR ADMISSION NO. 7**

Admit that VCI offers goods and services in the medical field.

**REQUEST FOR ADMISSION NO. 8**

Admit that VCI offers products for use in the treatment of patients with diabetes.

**REQUEST FOR ADMISSION NO. 9**

Admit that VCI markets its goods and services to doctors.

**REQUEST FOR ADMISSION NO. 10**

Admit that VCI has marketed its products to Richard E. Pratley, M.D.

**REQUEST FOR ADMISSION NO. 11**

Admit that Richard E. Pratley, M.D., is Director of the Florida Hospital Diabetes Institute.

**REQUEST FOR ADMISSION NO. 12**

Admit that there is a likelihood of confusion between VCI's Mark and Valeritas' Mark.

**REQUEST FOR ADMISSION NO. 13**

Admit that there has been actual confusion between VCI's Mark and Valeritas' Mark.

**REQUEST FOR ADMISSION NO. 14**

Admit that VCI's V-GO design mark is confusingly similar to Valeritas' V-GO design mark.

**REQUEST FOR ADMISSION NO. 15**

Admit that VCI's V-GO design mark is depicted here:



**REQUEST FOR ADMISSION NO. 16**

Admit that Valeritas' V-GO design mark is depicted here:



**REQUEST FOR ADMISSION NO. 17**

Admit that doctors who encounter VCI's Mark are likely to believe that Valeritas is the source of VCI's goods and/or services marketed and/or sold under VCI's Mark.

**REQUEST FOR ADMISSION NO. 18**

Admit that doctors who encounter VCI's Mark are likely to believe that Valeritas sponsors or endorses VCI and/or the goods and/or services marketed and/or sold under VCI's Mark.

**REQUEST FOR ADMISSION NO. 19**

Admit that doctors who encounter VCI's Mark are likely to believe that VCI is associated or otherwise affiliated with Valeritas in light of the similarities between the parties' V-GO marks.

**REQUEST FOR ADMISSION NO. 20**

Admit that patients who encounter VCI's Mark are likely to believe that Valeritas is the source of VCI's goods and/or services marketed and/or sold under VCI's Mark.

**REQUEST FOR ADMISSION NO. 21**

Admit that patients who encounter VCI's Mark are likely to believe that Valeritas sponsors or endorses VCI and/or the goods and/or services marketed and/or sold under VCI's Mark.

**REQUEST FOR ADMISSION NO. 22**

Admit that patients who encounter VCI's Mark are likely to believe that VCI is associated or otherwise affiliated with Valeritas in light of the similarities between the parties' V-GO marks.

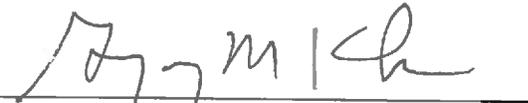
Date: December 21, 2011

VALERITAS, INC.,

By its attorneys

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By:



Gregory M. Krakau

Thomas F. Dunn

Sheri S. Mason

1601 Trapelo Road, Suite 205

Waltham, MA 02451

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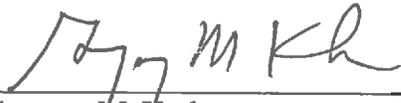
Email: [gkrakau@mbbp.com](mailto:gkrakau@mbbp.com)

**CERTIFICATE OF SERVICE**

I, Gregory M. Krakau, certify that a copy of the foregoing VALERITAS, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO VGO COMMUNICATIONS, INC. was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 21st day of December, 2011.

  
\_\_\_\_\_  
Gregory M. Krakau  
Attorney for Petitioner Valeritas, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92054171
	)	
Vgo Communications, Inc.,	)	
	)	
Registrant	)	

**REGISTRANT VGO COMMUNICATIONS, INC.'S RESPONSES TO PETITIONER  
VALERITAS, INC.'S FIRST SET OF INTERROGATORIES TO REGISTRANT**

**PRELIMINARY STATEMENT**

1. These answers are made solely for the purpose of this proceeding and are subject to all objections as to competence, relevance, materiality, and admissibility, as well as to any and all other objections on any other ground. All of these objections and grounds are hereby expressly reserved and may be interposed at the time of any deposition or during any resulting proceedings.

2. These answers are based upon information and documents presently available to and located by Vgo Communications, Inc. ("VCI" as designated in Valeritas' First Set of Interrogatories to Registrant) and its attorneys, and VCI intends no incidental or implied admissions. VCI's responses or objections to any interrogatory or part of any interrogatory is not intended and should not be construed as an admission or that the answer or objections constitutes

admissible evidence. VCI's responses to all, or any part, of an interrogatory is not intended and shall not be construed as a waiver by VCI of all, or any part, of any objection to the interrogatory.

3. The following general objections are incorporated into each answer as though set forth in full regardless of whether VCI also states a specific objection to an individual interrogatory. A specific answer may repeat a general objection for emphasis or for some other reason. Failure to include a general objection in any specific answer shall not be interpreted as a waiver of any general objection to that interrogatory.

4. In answering these Interrogatories, Request for Admissions and Requests for Production of Documents, VCI maintains that its mark is "VGO in Standard Character Format," the registration sought to be canceled in this proceeding by Valeritas, Reg. No. 3895432, is for the mark "VGO in Standard Character Format" and that when Valeritas characterizes VCI's mark as V-GO, it is mischaracterizing VCI's mark. In answering the aforementioned discovery requests, VCI answers pertain to the mark "VGO in Standard Character Format," except where otherwise noted.

#### GENERAL OBJECTIONS

1. VCI objects to the interrogatories to the extent they seek information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information.

2. VCI objects to the interrogatories to the extent they seek information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Petitioner, its counsel, or agents, or is otherwise equally available to Petitioner.

3. VCI objects to the interrogatories to the extent they seek information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege.

4. VCI objects to the interrogatories to the extent they are overly broad, unduly burdensome, oppressive, request irrelevant information, and/or are not reasonably calculated to lead to the discovery of admissible evidence.

5. VCI objects to the interrogatories to the extent they are unreasonably broad or burdensome by not providing a time limit as to the scope of the Interrogatory.

6. VCI objects to the interrogatories to the extent they are unreasonably broad or burdensome by not providing a geographic scope for the Interrogatory.

7. VCI objects to the interrogatories to the extent they contain words or phrases that lack an apparent meaning or have an uncertain meaning.

8. VCI objects to the interrogatories to the extent they impose obligations beyond those set forth in the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure.

9. VCI objects to the interrogatories to the extent that they number more than the number allowed under the Trademark Trial and Appeal Board Manual of Procedure.

Subject to the forgoing qualifications, General Objections and the specific objections made below, VCI answers Petitioner's First Set of Interrogatories as follows:

## **RESPONSES**

### **INTERROGATORY NO. 1:**

State all facts concerning VCI's adoption of VCI's Mark, including but not limited to:

- (a) identifying all persons who were involved in the selection of the mark and stating each such person's role in the selection of the mark;
- (b) identifying the date or dates upon which the mark was selected; and
- (c) stating whether any trademark searches were conducted in connection with the adoption of the mark, and if so, identifying the person(s) who conducted the search(es), whether or not such person(s) were attorneys, and identifying any search reports that were generated as a result of the search(es).

**RESPONSE TO INTERROGATORY NO. 1:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 3. In particular, VCI objects to this Interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. In addition, VCI objects to this Interrogatory to the extent that it seeks information that falls under attorney/client privilege or the attorney work product doctrine or any other applicable privilege. Subject to, and without waiving these objections, VCI responds as follows: Ned Semonite, VP Marketing of VCI selected VCI's mark in February 8, 2010. A trademark search was conducted by counsel for VGO.

**INTERROGATORY NO. 2:**

Identify each and every good and/or service advertised, promoted, distributed, offered, and/or sold by VCI in the United States under or in connection with VCI's Mark, and for each such good or service, state:

- (a) The date of first use in commerce of VCI's Mark in connection with the identified good or service;
- (b) The sales by unit volume, by month and year, for each year since such sales began;
- (c) The gross revenue, by month and year, for each year since such sales began;
- (d) The approximate annual dollar amount expended each year to date by VCI in advertising and promoting each identified good or service under VCI; Mark; and

- (e) The approximate annual dollar amount VCI expects to be spent in advertising and promoting VCI's goods and/or services in connection with VCI's Mark for each year from 2012 through 2016.

**RESPONSE TO INTERROGATORY NO. 2:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this Interrogatory to the extent that it requests to the extent they seek information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, VCI responds as follows: VCI provides robotic video and communication hardware and computer software for use in connection with audio and video communication systems under its mark. The first use in interstate commerce of VCI's Mark was July 29, 2010. VCI expended approximately \$50,000 on advertising and sales in 2010 and approximately \$200,000 in 2011. VCI projects advertising expenses to be \$400,000 in 2012, \$800,000 in 2013, \$1,800,000 in 2014 and \$4,500,000 in 2015. VCI will provide documents responsive to Interrogatory 2(b) and (c).

**INTERROGATORY NO. 3:**

Identify all persons with knowledge of:

- (a) Valeritas's use of Valeritas' Mark;
- (b) any likelihood of confusion between VCI's Mark and Valeritas's Mark; and
- (c) any actual confusion between VCI and/or VCI's Mark on the one hand and Valeritas and/or Valeritas' Mark on the other hand;

and for each such person, state all facts and circumstances concerning that person's knowledge.

**RESPONSE TO INTERROGATORY NO. 3:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence, in that it is impossible for VCI to identify “all persons with knowledge of Valeritas’ use of Valeritas’ Mark.” Additionally, VCI objects to this Interrogatory because the question of the likelihood of confusion between VCI’s Mark and Valeritas’ mark is a question of law. Subject to, and without waiving these objections, VCI responds as follows: VCI is not aware of any instances of actual confusion between VCI and/or VCI’s Mark on the one hand and Valeritas and/or Valeritas’ Mark on the other hand.

**INTERROGATORY NO. 4:**

State all facts concerning VCI’s class of customers—whether desired and/or actual—specifically with respect to demographic information for the customers (age, sex, income level, interests, and any other characteristics), how the customers purchased VCI’s products, and the uses to which the customers put VCI’s products.

**RESPONSE TO INTERROGATORY NO. 4:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of

admissible evidence, in that it requests information as to VCI customers “sex, income level, interests and any other characteristic.” Subject to, and without waiving these objections, VCI responds as follows: VCI provides its products to companies within the enterprise, education and healthcare markets, and these companies range from small businesses to Fortune 500 companies. Customers purchase VCI products directly from VCI or through VCI’s value added resellers. Customers use VCI products for remote communication purposes in many different applications and locations throughout the customer’s company.

**INTERROGATORY NO. 5:**

State all facts concerning VCI’s channels of trade, including but not limited to identifying all channels through which VCI’s goods are sold, whether online, through retail outlets (and if so, identify the retail outlets), trade shows, consumer shows, through the medical and/or health care profession, and/or otherwise, and listing the percentages of VCI’s sales, by unit and dollar volume, for each such channel of trade.

**RESPONSE TO INTERROGATORY NO. 5:**

VCI incorporates all of its General Objections and, specifically, General Objections 1, 4 and 7. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. VCI also objects to this interrogatory to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, in that the phrase “through the medical and/or health care profession” is unclear and therefore cannot be answered. Subject to, and without waiving these objections, VCI responds as follows: VCI sells 100% of its goods directly or through its Value Added Resellers. VCI does not sell its products through retail outlets, trade shows, consumer shows.

**INTERROGATORY NO. 6:**

State all facts concerning VCI's attendance at trade and consumer shows, identifying all shows attended, the dates upon which the shows took place, the sales made, by unit and dollar volume, at each show attended, and the dates upon which future shows that VCI plans to attend are scheduled to take place.

**RESPONSE TO INTERROGATORY NO. 6:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, VCI responds as follows: In the past, VCI has attended the RoboBusiness Conference & Expo in 2010 and 2011, DevLearn 2010 in San Francisco, CA, and DevLearn 2011 in Las Vegas, Nevada, InfoComm 2010 in San Diego, CA and InfoComm 2011 in Las Vegas, Nevada, American Telemedicine Association Conference 2010 in Tampa, Florida, the Collaboration Across Borders III in 2011 in Tucson, Arizona, and the Consumer Electronic Show in Las Vegas, Nevada. VCI plans to attend World Mobile Congress, Barcelona, Spain, on February 27 -March 1, 2012, Human Robot Interaction, March 5-8, 2012 in Boston, MA, Northwest Regional Telemedicine Conference, March 19-20, 2012 in Billings MT, Verizon MtoM Tech Showcase, March 20-21, 2012 in Columbus, Ohio, Enterprise Connect, March 26-29, 2012 in Orlando FL, American Telemedicine Association Conference 2012, April 29 - May 1, 2012 in San Jose, California, e-Heath 2012, May 27-30, 2012 in Vancouver, BC, InfoComm 2012, June 15-17, 2012 in Las Vegas, Nevada,

VCI- Group Annual Conference, October 22-24, 2012 in Monterey, CA. As stated in response to Interrogatory No. 6, VCI does not sell its products at trade shows.

**INTERROGATORY NO. 7:**

Identify representative specimens of advertisements, brochures, catalogs, news and/or feature stories, press releases, and/or promotional materials evidencing VCI's use of VCI's Mark in connection with each and every good and service upon which VCI's Mark has been used, and state the respective dates and publications of the media in which the material appeared.

**RESPONSE TO INTERROGATORY NO. 7:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Interrogatory.

**INTERROGATORY NO. 8:**

Identify each and every instance in which any person has claimed to be deceived, mistaken or confused regarding the source of VCI's goods or services offered under or in connection with VCI's Mark based on confusion with Valeritas and/or Valeritas' Mark, and identify each such person, the date upon which the claim of confusion was made, the employees and/or agents of VCI who have the most knowledge any such instance, and for each such person, state whether the person's alleged confusion resulted in a decision to purchase one party's goods in the mistaken belief that the other party was the source of the goods.

**RESPONSE TO INTERROGATORY NO. 8:**

VCI incorporates all of its General Objections and, specifically, General Objection No. 2. In particular, VCI objects to this Interrogatory to the extent it seeks information that is not within

its possession, custody or control and or is within the files or particular knowledge of Valeritas. Subject to, and without waiving these objections, VCI responds as follows: VCI is not aware of any instance in which any person has claimed to be deceived, mistaken or confused regarding the source of VCI's goods or services offered under or in connection with VCI's Mark based on confusion with Valeritas and/or Valeritas' Mark.

**INTERROGATORY NO. 9**

State all facts concerning how VCI's goods and/or services are marketed, promoted, offered, and/or sold to the medical and/or health care communities, describing whether and how VCI's goods are marketed, promoted, offered, and/or sold to doctors, hospitals, health insurers, and/or patients.

**RESPONSE TO INTERROGATORY NO. 9:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, VCI responds as follows: Customers purchase VCI products directly from VCI or through VCI's value added resellers. VCI markets or promotes its products to doctors and/or hospitals by direct mail targeting medical technology innovation officers or IT directors and by attending trade shows targeted to the telemedicine market. VCI offers and sells its products to hospitals and/or doctors directly or through value added resellers.

**INTERROGATORY NO. 10:**

State all facts concerning any communications between Ned Semonite and any doctors, including but not limited to Richard E. Pratley, M.D., concerning VCI, VCI's Mark, and/or

VCI's goods and/or services, identifying the date of any and all such communications and describing the content of such communications.

**RESPONSE TO INTERROGATORY NO. 10:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence, in that it asks for communications between Mr. Semonite and any doctors. Subject to, and without waiving these objections, VCI responds as follows: As part of his role of Vice President of Marketing, Mr. Semonite comes in contact with many doctors and other customers and prospects. Mr. Semonite does not have any communications between himself and Richard E. Pratley and does not have any recollection of communications with Richard E. Pratley. Dr. Pratley's name is not in VCI's CRM database and his name does not appear on any mailing lists obtained by VCI.

**INTERROGATORY NO. 11:**

Identify by uniform resource locator (URL) and/or domain name each and every website owned, operated, or used by VCI to advertise, promote, and/or sell any goods or services in connection with VCI's Mark, and identify all persons with knowledge of VCI's advertising, promotion, and/or sale of goods and services via the Internet.

**RESPONSE TO INTERROGATORY NO. 11:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this

Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, VCI responds as follows: VCI owns, operates and uses the domain name www.vgocom.com to advertise, and promote its goods or services in connection with VCI's Mark. In addition, VCI's Value Added Resellers promote VCI's products on their websites. As stated above, VCI does not sell its products via the Internet.

**INTERROGATORY NO. 12:**

For each request for admission set forth in Valeritas's First Set of Requests for Admissions that VCI does not unqualifiedly admit, state the factual basis for the denial or qualified admission, and identify all persons with knowledge of the facts described.

**RESPONSE TO INTERROGATORY NO. 12:**

VCI incorporates all of its General Objections and, specifically, General Objections 1, 4 and 8. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence and to the extent they impose obligations beyond those set forth in the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure. Finally, VCI objects to this Interrogatory to the extent that many of the Requests for Admissions were not answered because they required a conclusion of law, rather than a statement of fact.

Verification

On behalf of Vgo Communications, Inc., and in my capacity as

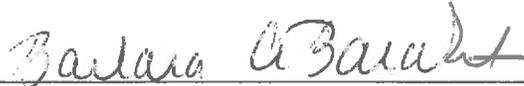
COO, I have read the foregoing responses to Petitioner Valeritas, Inc.'s First Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact contained herein. The response was prepared with the assistance of Vgo Communications, Inc.'s employees and with the assistance and advice of counsel. The answers are based on records and information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent I do not have personal knowledge, I have relied on others to gather the responsive information. I declare under penalty of perjury that the foregoing is true and correct.

Signed this 5 day of March, 2012

  
\_\_\_\_\_  
Name:  
Title: COO

As to objections

VGO COMMUNICATIONS, INC.  
By its attorneys,



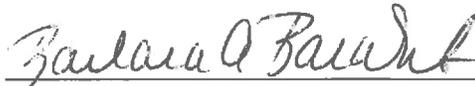
Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: March 8, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's First Set of Interrogatories to Registrant was served by first-class mail, postage-prepaid, this 8<sup>th</sup> day of March, 2012 upon:

Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
1601 Trapelo Road, Suite 205  
Waltham, Massachusetts 02451



Barbara A. Barakat

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92054171
	)	
Vgo Communications, Inc.,	)	
	)	
Registrant	)	

**REGISTRANT VGO COMMUNICATIONS, INC.'S RESPONSES TO PETITIONER  
VALERITAS, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS AND THINGS TO REGISTRANT**

**PRELIMINARY STATEMENT**

1. These answers are made solely for the purpose of this proceeding and are subject to all objections as to competence, relevance, materiality, and admissibility, as well as to any and all other objections on any other ground. All of these objections and grounds are hereby expressly reserved and may be interposed at the time of any deposition or during any resulting proceedings.

2. These answers are based upon information and documents presently available to and located by Registrant Vgo Communications Inc. (VCI as designated in Valeritas' First Set of Requests for Production of Documents and Things to Registrant) and its attorneys, and VCI intends no incidental or implied admissions. VCI's response or objections to any Request or part

of any Request is not intended and should not be construed as an admission or that the answer or objections constitutes admissible evidence. VCI's responses to all, or any part, of a Request is not intended and shall not be construed as a waiver by VCI of all, or any part, of any objection to the Request.

3. The following general objections are incorporated into each answer as though set forth in full regardless of whether VCI also states a specific objection to an individual request. A specific answer may repeat a general objection for emphasis or for some other reason. Failure to include a general objection in any specific answer shall not be interpreted as a waiver of any general objection to that answer.

4. In answering these Interrogatories, Request for Admissions and Requests for Production of Documents, VCI maintains that its mark is "VGO in Standard Character Format," that the registration sought to be canceled in this proceeding by Valeritas, Reg. No. 3895432, is for the mark "VGO in Standard Character Format" and that when Valeritas characterizes VCI's mark as V-GO, it is mischaracterizing VCI's mark. In answering the aforementioned discovery requests, VCI's answers pertain to the mark "VGO in Standard Character Format," except where otherwise noted.

## **GENERAL OBJECTIONS**

1. VCI objects to the Requests for Production of Documents and Things to the extent they seek documents that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information.

2. VCI objects to the Requests for Production of Documents and Things to the extent they seek documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner.
3. VCI objects to the Requests for Production of Documents and Things to the extent they seek documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege.
4. VCI objects to the Requests for Production of Documents and Things to the extent they are overly broad, unduly burdensome, oppressive, request irrelevant information, and/or are not reasonably calculated to lead to the discovery of admissible evidence.
5. VCI objects to the Requests for Production of Documents and Things to the extent they are unreasonably broad or burdensome by not providing a time limit as to the scope of the Request.
6. VCI objects to the Requests for Production of Documents and Things to the extent they are unreasonably broad or burdensome by not providing a geographic scope for the Request.
7. VCI objects to the Requests for Production of Documents and Things to the extent they contain words or phrases that lack an apparent meaning or have an uncertain meaning.
8. VCI objects to the Request for Production of Documents and Things to the extent they impose obligations beyond those set forth in the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure.

Subject to the forgoing qualifications, General Objections and the specific objections made below, VCI answers Petitioner's First Request for Production of Documents and Things as follows:

## **RESPONSES**

### **REQUEST FOR PRODUCTION NO. 1**

Produce all Documents and Things concerning VCI's selection, adoption and creation of VCI's Mark.

### **RESPONSE TO REQ FOR PROD NO. 1**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3, and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information and documents that fall under the attorney/client privilege, the attorney work-product doctrine or another applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 2**

Produce all Documents and Things concerning VCI's research regarding registrability and clearance of VCI's Mark.

### **RESPONSE TO REQ FOR PROD NO. 2**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Document Request to the extent that it seeks information protected by attorney/client privilege,

the attorney work-product doctrine, or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 3**

Produce all Documents and Things concerning any formal or informal trademark searches or investigations concerning VCI's Mark.

### **RESPONSE TO REQ FOR PROD NO. 3**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Document Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 4**

Produce all Documents and Things concerning any market studies, surveys, focus groups, or other studies concerning the use or advice against use of VCI's Mark.

#### **RESPONSE TO REQ FOR PROD NO. 4**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Document Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VGO responds as follows: There are no such documents.

#### **REQUEST FOR PRODUCTION NO. 5**

Produce all Documents and Things concerning any other trademark VCI considered adopting for use in association with any of its goods or services.

#### **RESPONSE TO REQ FOR PROD NO. 5**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Document Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 6**

Produce all Documents and Things identifying all goods and services on or in connection with which VCI uses VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 6**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide representative non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 7**

Produce two samples of each and every good upon which VCI uses VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 7**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, in that it seeks two samples of every good upon which VCI's mark is used. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide representative documents showing the mark as used on every good upon which VCI uses VCI's Mark.

**REQUEST FOR PRODUCTION NO. 8**

Produce all Documents and Things concerning VCI's corporate formation, including but not limited to Articles of Incorporation, By-Laws, and any amendments thereto.

**RESPONSE TO REQ FOR PROD NO. 8**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 9**

Produce all Documents and Things concerning VCI's corporate ownership structure.

**RESPONSE TO REQ FOR PROD NO. 9**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 10**

Produce all Documents and Things concerning U.S. Trademark Registration No. 3,895,432 for the V-GO mark for use on “robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems.”

**RESPONSE TO REQ FOR PROD NO. 10**

VCI incorporates all of its General Objections and specifically, General Objection No. 2, 4 and 7. In particular, VCI objects to this Document Request to the extent that it requests documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. VCI also objects to this Request to the extent that the phrase “Produce all Documents and Things concerning U.S. Trademark Registration No. 3,895,432” has an uncertain meaning and because U.S. Trademark Registration No. 3,895,432 is for the mark VGO, not V-GO. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Request related to U.S. Trademark Registration No. 3,895,432 for the mark VGO.

**REQUEST FOR PRODUCTION NO. 11**

Produce all Documents and Things concerning U.S. Trademark Application Serial No. 77/752,694 for the mark V-GO for use on “[m]edical apparatus, namely, infusion and injection devices for administering drugs.”

**RESPONSE TO REQ FOR PROD NO. 11**

VCI incorporates all of its General Objections and specifically, General Objection No. 2 and 3. In particular, VCI objects to this Document Request to the extent that it requests

documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents responsive to this Request that Petitioner would not already have in its possession.

#### **REQUEST FOR PRODUCTION NO. 12**

Produce all Documents and Things concerning U.S. Trademark Application Serial No. 77/752,697 for the mark V-GO DISPOSABLE INSULIN DELIVERY & Design for use on “[m]edical apparatus, namely, infusion and injection devices for administering drugs.”

#### **RESPONSE TO REQ FOR PROD NO. 12**

VCI incorporates all of its General Objections and specifically, General Objection No. 2 and 3. In particular, VCI objects to this Document Request to the extent that it requests documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents responsive to this Request that Petitioner would not already have in its possession.

#### **REQUEST FOR PRODUCTION NO. 13**

Produce all Documents and Things sufficient to establish VCI’s annual sales of each and every product or service upon which VCI’s Mark is used, by both dollar amount and unit volume.

**RESPONSE TO REQ FOR PROD NO. 13**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 14**

Produce all Documents and Things sufficient to establish VCI's annual advertising and promotional expenditures for each and every product or service upon which VCI's Mark is used.

**RESPONSE TO REQ FOR PROD NO. 14**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 15**

Produce all Documents and Things identifying the media used by VCI to advertise and/or promote VCI's Mark, including but not limited to all Documents and Things identifying the television stations, radio stations, newspapers, magazines, Internet sources, and all other media used by VCI to promote its alleged V-GO mark.

### **RESPONSE TO REQ FOR PROD NO. 15**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 4 and 7. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. VCI also objects to this Request to the extent that the phrase “alleged V-GO mark” has an uncertain meaning, as the Registration that is the subject of this cancellation proceeding is for the mark VGO in Standard Character format. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide representative non-privileged and otherwise non-objectionable documents responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 16**

Produce printouts of all web pages from every website operated or used by VCI to advertise, promote and/or sell goods bearing VCI’s Mark, including current and archival web pages.

### **RESPONSE TO REQ FOR PROD NO. 16**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide representative non-privileged and otherwise non-objectionable documents responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 17**

Produce all Documents and Things concerning any advertisements VCI placed in any magazine or other publication in any format, whether print, online, or in any other format.

### **RESPONSE TO REQ FOR PROD NO. 17**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, in that it requests “all Documents and Things concerning any advertisements placed in any format.” Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide representative non-privileged and otherwise non-objectionable documents responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 18**

Produce all Documents and Things concerning any news or feature stories about VCI and/or products sold under VCI’s Mark that have appeared in any magazine or other publication in any format, whether print, online, or in any other format.

### **RESPONSE TO REQ FOR PROD NO. 18**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, in that it requests “all Documents and Things concerning any news or feature stories about VCI and/or products sold under VCI’s Mark that

have appeared in any magazine or other publication in any format.” Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide representative non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 19**

Produce all advertising and/or promotional materials for each and every one of VCI's goods and services offered or sold under VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 19**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information, in that it requests “all advertising and/or promotional material.” Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide representative non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 20**

Produce all Documents and Things concerning VCI's marketing plans for VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 20**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly

burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 21**

Produce all Documents and Things concerning any advertising and/or marketing agencies used by VCI in promoting its goods or services, including but not limited to any and all agreements and/or correspondence with such advertising and/or marketing agencies.

**RESPONSE TO REQ FOR PROD NO. 21**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 22**

Produce all Documents and Things concerning or identifying VCI's competitors in the marketplace.

**RESPONSE TO REQ FOR PROD NO. 22**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery

of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 23**

Produce all Documents and Things concerning or identifying Valeritas' competitors in the marketplace.

**RESPONSE TO REQ FOR PROD NO. 23**

VCI incorporates all of its General Objections and specifically, General Objection No. 2 and 3. In particular, VCI objects to this Document Request to the extent that it requests documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 24**

Produce all Documents and Things concerning the circumstances under which VCI first learned of Valeritas and/or Valeritas' Mark.

**RESPONSE TO REQ FOR PROD NO. 24**

VCI incorporates all of its General Objections and specifically, General Objection No. 3. In particular, VCI objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 25**

Produce all Documents and Things concerning any and all third parties who have attempted to enforce trademarks against VCI based on VCI's alleged use of VCI's Mark, including but not limited to any and all cease and desist letters, trademark oppositions, trademark cancellation proceedings, litigations filed in state and/or federal court, and any other efforts by any third party to enforce one or more of its trademarks against VCI based on VCI's alleged use of VCI's Mark.

### **RESPONSE TO REQ FOR PROD NO. 25**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 3. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

### **REQUEST FOR PRODUCTION NO. 26**

Produce all Documents and Things concerning any license agreements or negotiations concerning VCI's Mark, whether or not any such agreement was reached, and whether granted by VCI to a third party or granted by a third party to VCI, including but not limited to agreements, drafts of agreements, and correspondence between VCI and any third party concerning such a license.

### **RESPONSE TO REQ FOR PROD NO. 26**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 27**

Produce all Documents and Things concerning any assignments concerning VCI's Mark, whether such an assignment was granted by VCI to a third party, granted by a third party to VCI, or was an intermediary assignment, including but not limited to agreements, drafts of agreements, and correspondence between VCI and any third party concerning such an assignment.

**RESPONSE TO REQ FOR PROD NO. 27**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 28**

Produce all Documents and Things concerning any descriptions of the class of customers to whom VCI offers or sells its goods and/or services.

**RESPONSE TO REQ FOR PROD NO. 28**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 29**

Produce all Documents and Things concerning descriptions of the channels of trade for distribution of VCI's goods and/or services under VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 29**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 30**

Produce all Documents and Things sufficient to demonstrate the geographic scope of VCI's use of VCI's Mark within the United States.

**RESPONSE TO REQ FOR PROD NO. 30**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 31**

Produce all Documents and Things concerning any plans to expand the present use of VCI's Mark to other products or services, to other geographic areas, or to sell through other channels of trade.

**RESPONSE TO REQ FOR PROD NO. 31**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 32**

Produce all Documents and Things concerning contracts or agreements with affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, doctors, wholesalers, and/or retailers through whom VCI markets and sells its goods and services under VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 32**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 33**

Produce all Documents and Things concerning any instances in which a person has been confused, deceived, or mistaken about the source of VCI's goods or services, believing them to be Valeritas', or vice versa.

**RESPONSE TO REQ FOR PROD NO. 33**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work product doctrine or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 34**

Produce all Documents and Things concerning any instances in which a person has been confused, deceived, or mistaken believing that VCI and Valeritas were a single entity or related entities.

**RESPONSE TO REQ FOR PROD NO. 34**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work product doctrine or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of

admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 35**

Produce all Documents and Things concerning any communications between Ned Semonite and any doctors, including but not limited to Richard E. Pratley, M.D., concerning VCI, VCI's Mark, and/or VCI's goods and/or services.

**RESPONSE TO REQ FOR PROD NO. 35**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work product doctrine or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 36**

Produce all Documents and Things concerning any instances in which a person has been confused, deceived, or mistaken believing that Valeritas sponsors or endorses VCI or its products, or vice versa.

**RESPONSE TO REQ FOR PROD NO. 36**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work product doctrine or any other applicable privilege. Further, VCI objects to this Document

Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents.

**REQUEST FOR PRODUCTION NO. 37**

Produce all Documents and Things identifying each and every employee and/or agent of VCI charged with responsibility for VCI's Mark and/or describing any such employee's or agent's duties with respect to VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 37**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 38**

Produce all Documents and Things concerning Valeritas.

**RESPONSE TO REQ FOR PROD NO. 38**

VCI incorporates all of its General Objections and specifically, General Objection No. 2 and 3. In particular, VCI objects to this Document Request to the extent that it requests documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner. VCI also objects to this Request to the

extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: Other than documents received from Valeritas and/or the USPTO related to this proceeding, there are no such documents.

**REQUEST FOR PRODUCTION NO. 39**

Produce all Documents and Things concerning information on market share, consumer recognition, fame and reputation of VCI's Mark.

**RESPONSE TO REQ FOR PROD NO. 39**

VCI incorporates all of its General Objections and specifically, General Objections No. 1 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 40**

Produce all Documents and Things concerning settlement negotiations between VCI and Valeritas.

**RESPONSE TO REQ FOR PROD NO. 40**

VCI incorporates all of its General Objections and specifically, General Objection No. 3. In particular, VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Subject to, and without waiving these objections, VCI responds as follows: There are no such documents.

#### **REQUEST FOR PRODUCTION NO. 41**

Produce all Documents and Things identified in VCI's Responses to Valeritas's First Set of Interrogatories.

#### **RESPONSE TO REQ FOR PROD NO. 41**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work product doctrine or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents responsive to this Request.

#### **REQUEST FOR PRODUCTION NO. 42**

With respect to Valeritas, Inc.'s First Set of Requests for Admissions to VGo Communications, Inc., for each request that is not unqualifiedly admitted, produce all Documents and Things that support VCI's reasons for not unqualifiedly admitting the request.

#### **RESPONSE TO REQ FOR PROD NO. 42**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work product doctrine or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting

irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

VGO COMMUNICATIONS, INC.  
By its attorneys,

  
\_\_\_\_\_  
Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: March 8, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's First Request for Production of Documents were served by first-class mail, postage-prepaid, this 8<sup>th</sup> day of March, 2012 upon:

Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
1601 Trapelo Road, Suite 205  
Waltham, Massachusetts 02451

  
Barbara A. Barakat

VACTH-AD/001

WILMERHALE

March 8, 2012

Barbara A. Barakat

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Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
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Morse, Barnes-Brown & Pendleton, P.C.  
1601 Trapelo Road, Suite 205  
Waltham, Massachusetts 02451

Re: Valeritas, Inc. v. Vgo Communications, Inc.  
Trademark Cancellation No. 92/054171



Dear Greg:

Enclosed are Vgo Communication's responses to Valeritas' First Set of Interrogatories and Requests for Admissions and Production of Documents and Things for the above-identified proceeding. If there are any questions, do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara A. Barakat".

Barbara A. Barakat

Enclosures

cc: Michael J. Bevilacqua, Esq. (w/o enclosures)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	
Petitioner	)	
v.	)	Cancellation No. 92054171
Vgo Communications, Inc.,	)	
Registrant	)	

**REGISTRANT VGO COMMUNICATIONS, INC.’S RESPONSES TO PETITIONER  
VALERITAS, INC.’S FIRST SET OF REQUESTS FOR ADMISSIONS TO VGO  
COMMUNICATIONS, INC.**

**PRELIMINARY STATEMENT**

1. These answers are made solely for the purpose of this proceeding and are subject to all objections as to competence, relevance, materiality, and admissibility, as well as to any and all other objections on any other ground. All of these objections and grounds are hereby expressly reserved and may be interposed at the time of any deposition or during any resulting proceedings.

2. These answers are based upon information and documents presently available to and located by Registrant Vgo Communications Inc. (“VCI” as designated in Valeritas’ First Set of Requests for Admissions to Registrant) and its attorneys, and VCI intends no incidental or

implied admissions. VCI's response or objections to any Request or part of any Request is not intended and should not be construed as an admission or that the answer or objections constitutes admissible evidence. VCI's responses to all, or any part, of a Request is not intended and shall not be construed as a waiver by VCI of all, or any part, of any objection to the Request.

3. The following general objections are incorporated into each answer as though set forth in full regardless of whether VCI also states a specific objection to an individual request. A specific answer may repeat a general objection for emphasis or for some other reason. Failure to include a general objection in any specific answer shall not be interpreted as a waiver of any general objection to that answer.

4. In answering these Interrogatories, Request for Admissions and Requests for Production of Documents, VCI maintains that its mark is "VGO in Standard Character Format," the registration sought to be canceled in this proceeding by Valeritas, Reg. No. 3895432, is for the mark "VGO in Standard Character Format" and that when Valeritas characterizes VCI's mark as V-GO, it is mischaracterizing VCI's mark. In answering the aforementioned discovery requests, VCI answers pertain to the mark "VGO in Standard Character Format," except where otherwise noted.

## **GENERAL OBJECTIONS**

1. VCI objects to the Requests for Admissions to the extent they seek information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information.

2. VCI objects to the Requests for Admissions to the extent they seek information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Petitioner, its counsel, or agents, or is otherwise equally available to Petitioner.

3. VCI objects to the Requests for Admissions to the extent they seek information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege.

4. VCI objects to the Requests for Admissions to the extent they are overly broad, unduly burdensome, oppressive, request irrelevant information, and/or are not reasonably calculated to lead to the discovery of admissible evidence.

5. VCI objects to the Requests for Admissions to the extent they are unreasonably broad or burdensome by not providing a time limit as to the scope of the Request.

6. VCI objects to the Requests for Admissions to the extent they are unreasonably broad or burdensome by not providing a geographic scope for the Request.

7. VCI objects to the Requests for Admissions to the extent they contain words or phrases that lack an apparent meaning or have an uncertain meaning.

8. VCI objects to the Request for Production of Admissions to the extent they impose obligations beyond those set forth in the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure.

Subject to the forgoing qualifications, General Objections and the specific objections made below, VCI answers Petitioner's First Requests for Admissions as follows.

## RESPONSES

### REQUEST FOR ADMISSION NO. 1:

Admit that VCI's Mark is identical to Valeritas' Mark.

### RESPONSE TO REQUEST FOR ADMISSION NO. 1:

In addition to the foregoing General Objections, VCI objects to this Request on the ground that it calls for a legal conclusion rather than an admission of fact. Subject to and without waiving the foregoing General Objections and Specific Objection, to the extent a response is required, VCI denies this Request.

### REQUEST FOR ADMISSION NO. 2:

Admit that the mark depicted in VCI's U.S. Trademark Registration No. 3,895,432 for the V-GO mark is identical to the mark depicted in Valeritas' U.S. Trademark Application Ser. No. 77/752,694 for the V-GO mark.

### RESPONSE TO REQUEST FOR ADMISSION NO. 2:

In addition to the foregoing General Objections, VCI objects to this Request on the ground that it calls for a legal conclusion rather than an admission of fact. VCI also objects to this Request because the mark depicted in U.S. Trademark Registration No. 3,895,432 is VGO, not V-GO. Subject to and without waiving the foregoing General Objections and Specific Objection, to the extent a response is required, VCI denies this Request.

### REQUEST FOR ADMISSION NO. 3:

Admit that VCI's goods are closely related to Valeritas' goods.

### RESPONSE TO REQUEST FOR ADMISSION NO. 3:

VCI incorporates all of its Objections, and specifically, General Objection Nos. 2. VCI objects to this Request to the extent that it seeks information that is not within its

possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Petitioner, its counsel, or agents, or is otherwise equally available to Petitioner, in that VCI does not know the extent of Valeritas' goods. Subject to and without waiving the foregoing General Objections and specific Objection, VCI denies this Request as to the goods identified in Valeritas' trademark applications and registrations listed on the records of the USPTO online database.

**REQUEST FOR ADMISSION NO. 4:**

Admit that Valeritas offers goods and services in the medical field.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

VCI incorporates all of its Objections, and specifically, General Objections Nos. 2 and 7. VCI objects to this Request to the extent it seeks information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Petitioner, its counsel, or agents, or is otherwise equally available to Petitioner. In addition, VCI objects to this Request because the phrase "in the medical field" is vague, ambiguous and of uncertain meaning. Subject to and without waiving the foregoing General Objections and Specific Objections, VCI cannot admit or deny this Request.

**REQUEST FOR ADMISSION NO. 5:**

Admit that Valeritas offers products for use in the treatment of patients with diabetes.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

VCI incorporates all of its Objections, and specifically, General Objection No. 2. VCI objects to this Request to the extent it seeks information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Petitioner, its counsel, or agents, or is otherwise equally available to

Petitioner. Subject to and without waiving the foregoing General Objections and Specific Objection, VCI admits that on the public website of Valeritas, Valeritas promotes itself as offering products for use in the treatment of patients with diabetes. VGO otherwise denies this Request.

**REQUEST FOR ADMISSION NO. 6:**

Admit that Valeritas markets its goods and services to doctors.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

VCI incorporates all of its Objections, and specifically, General Objection No. 2. VCI objects to this Request to the extent it seeks information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Petitioner, its counsel, or agents, or is otherwise equally available to Petitioner. Subject to and without waiving the foregoing General Objections and Specific Objection, after reasonable inquiry, the information known or readily obtainable by VCI is insufficient to enable VCI to admit or deny Request 6 and therefore VCI can neither admit or deny Request 6.

**REQUEST FOR ADMISSION NO. 7:**

Admit that VCI offers goods and services in the medical field.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

VCI incorporates all of its Objections, and specifically, General Objection No. 7. VCI objects to this Request because the phrase “in the medical field” is vague, ambiguous and of uncertain meaning. Subject to and without waiving the foregoing General Objections and Specific Objection, VCI denies that it offers goods or services used to perform medical procedures but VCI admits that one of the fields in which VCI offers its goods and services is healthcare. VCI otherwise denies this Request.

**REQUEST FOR ADMISSION NO. 8:**

Admit that VCI offers products for use in the treatment of patients with diabetes.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

VCI incorporates all of its Objections, and specifically, General Objection No. 7. VCI objects to this Request because the phrase “for use in the treatment of patients with diabetes” is vague, ambiguous and of uncertain meaning. Subject to and without waiving the foregoing General Objections and Specific Objection, VCI denies that its products are used to treat diabetes. VCI otherwise denies this Request.

**REQUEST FOR ADMISSION NO. 9:**

Admit that VCI markets its goods and services to doctors.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

VCI admits that it markets its goods and services to doctors.

**REQUEST FOR ADMISSION NO. 10:**

Admit that VCI has marketed its products to Richard E. Pratley, M.D.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

VCI incorporates all of its Objections, and specifically, General Objection No. 4. In particular, VCI objects to this Request for Admissions to the extent it is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing General Objections and Specific Objection, VCI denies that VCI has marketed its products to Richard E. Pratley, M.D.

**REQUEST FOR ADMISSION NO. 11:**

Admit that Richard E. Pratley, M.D., is Director of the Florida Hospital Diabetes Institute.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

VCI incorporates all of its Objections, and specifically, General Objections Nos. 2 and 4. In particular, VCI objects to this Request to the extent it seeks information that is not within its possession, custody or control and/or is a matter of public record, is within the files and/or particular knowledge of Petitioner, its counsel, or agents, or is otherwise equally available to Petitioner. VCI also objects to this Request for Admissions to the extent it is overly broad, unduly burdensome, oppressive, request irrelevant information, and/or are not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing General Objections and Specific Objections, the information known or readily obtainable by VCI is insufficient to enable VCI to admit or deny Request 11 and therefore VCI can neither admit or deny Request 11.

**REQUEST FOR ADMISSION NO. 12:**

Admit that there is a likelihood of confusion between VCI's Mark and Valeritas' Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

In addition to the foregoing General Objections, VCI objects to this Request on the ground that it calls for a legal conclusion rather than an admission of fact. Subject to and without waiving the foregoing General Objections and Specific Objection, to the extent a response is required, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 13:**

Admit that there has been actual confusion between VCI's Mark and Valeritas' Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies that it is aware of any actual confusion between its Mark and Valeritas' Mark. VCI otherwise denies this Request.

**REQUEST FOR ADMISSION NO. 14:**

Admit that VCI's V-GO design mark is confusingly similar to Valeritas' V-GO design mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

VCI objects to this Request for Admission because the manner in which VCI portrays its mark is beyond the scope of this proceeding. The mark depicted in VCI's US Trademark Registration No. 3895432 is VGO in Standard Character Format. Subject to and without waiving the foregoing General Objections and Specific Objection, to the extent a response is required, VCI GO denies this Request.

**REQUEST FOR ADMISSION NO. 15:**

Admit that VCI's V-GO design mark is depicted here:



**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

VGO objects to this Request for Admission because the manner in which VCI portrays its mark is beyond the scope of this proceeding. The mark depicted in VCI's US Trademark Registration No. 3895432 is VGO in Standard Character Format. Subject to and without waiving the foregoing General Objections and Specific Objection, to the extent a response is required, VCI admits that one use of its VGO mark is in the manner portrayed in this Request.

**REQUEST FOR ADMISSION NO. 16:**

Admit that Valeritas' V-GO design mark is depicted here:



**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

VCI incorporates all of its Objections, and specifically, General Objection No. 2. In particular, VCI objects to this Request on the ground that it seeks information that is beyond the possession, custody, and control of VCI and/or is within the control and knowledge of Petitioner. Subject to and without waiving the foregoing General Objections and Specific Objection, to the extent a response is required, VCI admits that the mark depicted in this Request is the one illustrated in Valeritas' United States Trademark Application Serial No. 77/752697. VGO otherwise denies this Request.

**REQUEST FOR ADMISSION NO. 17:**

Admit that doctors who encounter VCI's Mark are likely to believe that Valeritas is the source of VCI's goods and/or services marketed and/or sold under VCI's Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 18:**

Admit that doctors who encounter VCI's Mark are likely to believe that Valeritas sponsors or endorses VCI and/or the goods and/or services marketed and/or sold under VCI's Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 19:**

Admit that doctors who encounter VCI's Mark are likely to believe that VCI is associated or otherwise affiliated with Valeritas in light of the similarities between the parties' V-GO marks.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

VCI incorporates all of its Objections, and also objects to this Request as mischaracterizing VCI's registered mark, which is VGO. Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 20:**

Admit that patients who encounter VCI's Mark are likely to believe that Valeritas is the source of VCI's goods and/or services marketed and/or sold under VCI's Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 21:**

Admit that patients who encounter VCI's Mark are likely to believe that Valeritas sponsors or endorses VCI and/or the goods and/or services marketed and/or sold under VCI's Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies this Request.

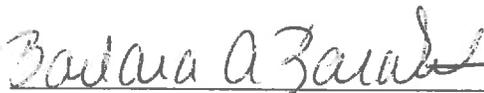
**REQUEST FOR ADMISSION NO. 22:**

Admit that patients who encounter VCI's Mark are likely to believe that VCI is associated or otherwise affiliated with Valeritas in light of the similarities between the parties' V-GO marks.

**RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies this Request.

VGO COMMUNICATIONS, INC.  
By its attorneys,



Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: March 8, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Registrant's Responses to Petitioner's First Request for Admissions were served by first-class mail, postage-prepaid, this 8<sup>th</sup> day of March, 2012 upon:

Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
1601 Trapelo Road, Suite 205  
Waltham, Massachusetts 02451



Barbara A. Barakat

WALTHAM-ADV00

WILMERHALE

August 22, 2012

Barbara A. Barakat

**By First Class Mail**

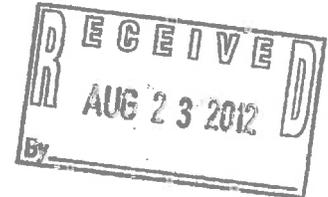
+1 617 526 6154(t)

+1 617 526 5000(f)

barbara.barakat@wilmerhale.com

Sheri S. Mason, Esq.  
Morse Barnes-Brown Pendleton PC  
CityPoint  
230 Third Avenue, 4th Floor  
Waltham, Massachusetts 02451

Re: Valeritas, Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171



Dear Sheri:

Enclosed please find:

Registrant's Amended Response to Interrogatory No. 2, and

Registrant's Documents No. VGO 000664-670.

If you have any questions, do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Barbara A. Barakat".

Barbara A. Barakat

Enclosures

cc: Thomas F. Dunn, Esq. (w/o enclosures)  
Michael J. Bevilacqua, Esq. (w/o enclosures)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	
Petitioner	)	
v.	)	Cancellation No. 92054171
Vgo Communications, Inc.,	)	
Registrant	)	

**REGISTRANT VGO COMMUNICATIONS, INC.’S AMENDED RESPONSE TO  
PETITIONER VALERITAS, INC.’S FIRST SET OF INTERROGATORIES TO  
REGISTRANT**

Subject to the qualifications and the General Objections as listed in Registrant’s Response to Petitioner’s First Set of Interrogatories and the specific objections made below, Registrant updates its earlier Responses to Petitioner’s First Set of Interrogatories to Registrant as follows. These responses are confidential and designated “CONFIDENTIAL – FOR ATTORNEYS EYES ONLY.”

**CONFIDENTIAL – FOR ATTORNEYS EYES ONLY**

RESPONSES

INTERROGATORY NO. 2:

Identify each and every good and/or service advertised, promoted, distributed, offered, and/or sold by VCI in the United States under or in connection with VCI's Mark, and for each such good or service, state:

- (a) The date of first use in commerce of VCI's Mark in connection with the identified good or service;
- (b) The sales by unit volume, by month and year, for each year since such sales began;
- (c) The gross revenue, by month and year, for each year since such sales began;
- (d) The approximate annual dollar amount expended each year to date by VCI in advertising and promoting each identified good or service under VCI; Mark; and
- (e) The approximate annual dollar amount VCI expects to be spent in advertising and promoting VCI's goods and/or services in connection with VCI's Mark for each year from 2012 through 2016.

RESPONSE TO INTERROGATORY NO. 2:

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this Interrogatory to the extent that it requests to the extent they seek information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, VCI responds as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL – FOR ATTORNEYS EYES ONLY

**Verification**

On behalf of Vgo Communications, Inc., and in my capacity as \_\_\_\_\_, I have read the foregoing responses to Petitioner Valeritas, Inc.'s First Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact contained herein. The response was prepared with the assistance of Vgo Communications, Inc.'s employees and with the assistance and advice of counsel. The answers are based on records and information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent I do not have personal knowledge, I have relied on others to gather the responsive information. I declare under penalty of perjury that the foregoing is true and correct.

Signed this \_\_\_\_ day of August , 2012

\_\_\_\_\_  
Name:

Title:

As to objections

VGO COMMUNICATIONS, INC.

By its attorneys,



Michael J. Bevilacqua

Barbara A. Barakat

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

(617) 526-6000

Date: August 22, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's First Set of Interrogatories to Registrant was served by first-class mail, postage-prepaid, this 22<sup>nd</sup> day of August, 2012 upon:

Sheri S. Mason, Esq.

Gregory M. Krakau, Esq.

Thomas F. Dunn, Esq.

Faith D. Kasparian, Esq.

Morse, Barnes-Brown & Pendleton, P.C.

1601 Trapelo Road, Suite 205

Waltham, Massachusetts 02451



Barbara A. Barakat

8129

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	In the matter of U.S. Reg. No. 3,895,432
Petitioner,	)	For the Mark: VGO
v.	)	Filing Date: March 2, 2010
VGo Communications, Inc.	)	Registration Date: December 21, 2010
Respondent,	)	Cancellation No.: 92054171

**VALERITAS INC.'S SECOND SET OF INTERROGATORIES  
TO VGO COMMUNICATIONS, INC.**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Petitioner, Inc. ("Valeritas") hereby serves its Second Set of Interrogatories to be answered by Respondent VGo Communications, Inc. ("VCI"), under oath, said answers to be served upon Valeritas within thirty (30) days as provided by the Federal Rules of Civil Procedure.

**DEFINITIONS AND INSTRUCTIONS**

For purposes of these requests for production of documents and things, the definitions and instructions provided in Valeritas' First Set of Interrogatories are incorporated herein, as is the definition of the "VCI's Design Mark," which is defined as the VGO mark as depicted below:



**INTERROGATORIES**

**INTERROGATORY NO. 13**

State all facts concerning VCI's creation, selection, and adoption of the VCI's Design

Mark, including but not limited to:

- (a) identifying all persons who were involved in the creation, selection, and adoption of VCI's Design Mark and stating each such person's role in the creation, selection and adoption said mark; and
- (b) identifying the date or dates upon which VCI's Design Mark was created.

**INTERROGATORY NO. 14**

State all facts concerning how VCI's goods and/or services are marketed, promoted, offered, and/or sold to the medical and/or health care communities, describing whether and how VCI's goods are marketed, promoted, offered, and/or sold to doctors, hospitals, health insurers, and/or patients.

**INTERROGATORY NO. 15**

State all facts concerning VCI's relationship with companies in the field of treating, evaluating, diagnosing, and/or counseling patients with diabetes, including but not limited to PositiveID Corporation.

**INTERROGATORY NO. 16**

State all facts concerning the joint demonstration with PositiveID Corporation's wireless communication device for diabetes management operating in conjunction with VCI's robotic telepresence.

**INTERROGATORY NO. 17**

State all facts concerning VCI's connection with ExL Pharmaceutical Conferences.

Date: August 29, 2012

VALERITAS, INC.,

By its attorneys

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By:



Sheri S. Mason  
Thomas F. Dunn

230 Third Avenue, 4<sup>th</sup> Floor  
Waltham, MA 02451

Tel: (781) 622-5930

Fax: (781) 622 5933

Email: [ttab@mbbp.com](mailto:ttab@mbbp.com)

**CERTIFICATE OF SERVICE**

I, Sheri S. Mason, certify that a copy of the foregoing VALERITAS, INC.'S SECOND SET OF INTERROGATORIES TO VGO COMMUNICATIONS, INC. was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 29th day of August, 2012.



---

Sheri S. Mason  
Attorney for Petitioner Valeritas, Inc.

8129

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	In the matter of U.S. Reg. No. 3,895,432
	)	
Petitioner,	)	For the Mark: VGO
	)	
v.	)	Filing Date: March 2, 2010
	)	
VGo Communications, Inc.	)	Registration Date: December 21, 2010
	)	
Respondent,	)	Cancellation No.: 92054171
	)	

**VALERITAS, INC.'S SECOND SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS AND THINGS TO VGO COMMUNICATIONS, INC.**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Petitioner Valeritas, Inc. ("Valeritas") hereby serves its Second Set of Requests for Production of Documents and Things on Respondent VGo Communications, Inc. ("VCI"), and requests that VCI produce copies of the following Documents and Things which are in VCI' possession, custody, or control. VCI shall produce such Documents and Things to Sheri S. Mason, Morse, Barnes-Brown, & Pendleton, P.C., 230 Third Avenue, 4<sup>th</sup> Floor, Waltham, Massachusetts 02451, within thirty (30) days of service of these requests, or at such other time and place as may be mutually agreed upon by the parties, as provided in the Federal Rules of Civil Procedure.

These requests are continuing in nature, and in the event VCI becomes aware of or otherwise acquires possession, custody or control of additional responsive documents, VCI must promptly produce such additional documents for inspection and copying, in accordance with the Federal Rules of Civil Procedure.

## **DEFINITIONS AND INSTRUCTIONS**

For purposes of these requests for production of documents and things, the definitions and instructions provided in Valeritas' First Set of Interrogatories and the definition of "VCI's Design Mark" provided in Valeritas' Second Set of Interrogatories, are incorporated herein.

## **DOCUMENTS AND THINGS TO BE PRODUCED**

### **REQUEST FOR PRODUCTION NO. 43**

Produce all Documents and Things concerning any other designs and/or logos VCI considered adopting for use in association with any of its goods or services.

### **REQUEST FOR PRODUCTION NO. 44**

Produce all Documents and Things concerning the mark V-GO, as depicted in U.S. Trademark Application Serial No. 77/752,694, including but not limited to any and all correspondence concerning the same.

### **REQUEST FOR PRODUCTION NO. 45**

Produce all Documents and Things concerning the mark V-GO DISPOSABLE INSULIN DELIVERY & Design, as depicted in U.S. Trademark Application Serial No. 77/752,697, including but not limited to any and all correspondence concerning the same.

### **REQUEST FOR PRODUCTION NO. 46**

Produce all Documents and Things identified in VCI's Responses to Valeritas's Second Set of Interrogatories.

### **REQUEST FOR PRODUCTION NO. 47**

With respect to Valeritas, Inc.'s Second Set of Requests for Admissions to VGo Communications, Inc., for each request that is not unqualifiedly admitted, produce all Documents and Things that support VCI's reasons for not unqualifiedly admitting the request.

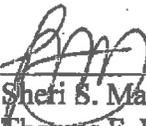
Date: August 29, 2012

VALERITAS, INC.,

By its attorneys

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By:

  
\_\_\_\_\_  
Sheri S. Mason

Thomas F. Dunn

230 Third Avenue, 4<sup>th</sup> Floor

Waltham, MA 02451

Tel: (781) 622-5930

Fax: (781) 622 5933

Email: [ttab@mbbp.com](mailto:ttab@mbbp.com)

**CERTIFICATE OF SERVICE**

I, Sheri S. Mason, certify that a copy of the foregoing VALERITAS, INC.'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO VGO COMMUNICATIONS, INC. was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 29<sup>th</sup> day of August, 2012.



---

Sheri S. Mason  
Attorney for Petitioner Valeritas, Inc.

8/29

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	In the matter of U.S. Reg. No. 3,895,432
Petitioner,	)	For the Mark: VGO
v.	)	Filing Date: March 2, 2010
VGo Communications, Inc.	)	Registration Date: December 21, 2010
Respondent,	)	Cancellation No.: 92054171

**VALERITAS, INC.'S SECOND SET OF REQUESTS FOR ADMISSIONS  
TO VGO COMMUNICATIONS, INC.**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Petitioner Valeritas, Inc. ("Valeritas") requests that Respondent VGo Communications, Inc. ("VCI") respond by admitting the truthfulness of the matters set forth below, within thirty (30) days of service.

**DEFINITIONS AND INSTRUCTIONS**

For purposes of these requests for admissions, the definitions and instructions provided in Valeritas' First Set of Interrogatories and the definition of "VCI's Design Mark" provided in Valeritas' Second Set of Interrogatories, are incorporated herein. In addition:

If VCI objects to any request for admission, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why VCI cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that VCI qualify an answer or deny only a part of the matter of which an admission is requested, VCI shall specify so much of the request as is true and qualify or deny the remainder.

VCI may not give lack of information or knowledge as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that information known or readily obtainable by it is insufficient to enable it to admit or deny.

**MATTERS TO BE ADMITTED**

**REQUEST FOR ADMISSION NO. 23**

Admit that VCI did not consider any marks other than the VCI Mark and the VCI Design Mark.

**REQUEST FOR ADMISSION NO. 24**

Admit that VCI collaborated with a company named PositiveID Corporation.

**REQUEST FOR ADMISSION NO. 25**

Admit that VCI hosted a joint demonstration with PositiveID Corporation's wireless communication device for diabetes management operating in conjunction with VCI's robotic telepresence.

**REQUEST FOR ADMISSION NO. 26**

Admit that Valeritas' Mark in standard characters appeared in at least one screening search for VCI's Mark.

**REQUEST FOR ADMISSION NO. 27**

Admit that Valeritas' Mark (with design) appeared in at least one screening search for VCI's Mark.

**REQUEST FOR ADMISSION NO. 28**

Admit that VCI had actual notice of Valeritas' Mark in standard characters.

**REQUEST FOR ADMISSION NO. 29**

Admit that VCI had actual notice of Valeritas' Mark (with design), which includes a

pending application for the same.

**REQUEST FOR ADMISSION NO. 30**

Admit that Ned Semonite selected the VCI Mark and the VCI Design Mark.

**REQUEST FOR ADMISSION NO. 31**

Admit that Ned Semonite had access to VCI's trademark screening search results.

**REQUEST FOR ADMISSION NO. 32**

Admit that VCI's product may be used by healthcare professionals in the course of treating, evaluating, diagnosing, and/or counseling medical patients.

**REQUEST FOR ADMISSION NO. 33**

Admit that VCI's product may be used by healthcare professionals in the course of treating, evaluating, diagnosing, and/or counseling patients with diabetes.

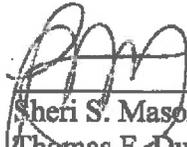
Date: August 29, 2012

VALERITAS, INC.,

By its attorneys

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By:



Sheri S. Mason  
Thomas E. Dunn  
230 Third Avenue, 4<sup>th</sup> Floor  
Waltham, MA 02451  
Tel: (781) 622-5930  
Fax: (781) 622 5933  
Email: [ttab@mbbp.com](mailto:ttab@mbbp.com)

**CERTIFICATE OF SERVICE**

I, Sheri S. Mason, certify that a copy of the foregoing VALERITAS, INC.'S SECOND SET OF REQUESTS FOR ADMISSIONS TO VGO COMMUNICATIONS, INC. was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 29th day of August, 2012.



---

Sheri S. Mason  
Attorney for Petitioner Valeritas, Inc.

ALTM-ADVOO1

WILMERHALE

September 10, 2012

Barbara A. Barakat

**By Email**  
**Confirmation copy by First Class Mail**

+1 617 526 6154(t)  
+1 617 526 5000(f)  
barbara.barakat@wilmerhale.com

Sheri S. Mason, Esq.  
Morse Barnes-Brown Pendleton PC  
CityPoint  
230 Third Avenue, 4th Floor  
Waltham, Massachusetts 02451

Re: Valeritas. Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171

Docketed  
Rec'd 9/11/12  
Items Due Discovery  
Responses due - 10/3/12  
Scanned \_\_\_\_\_  
Initials PDD

Dear Sheri:

This letter is further to our letter of August 22, 2012 and responsive to your letter dated August 29, 2012.

We will forward the responses to Opposer's Second Set of Interrogatories, Requests for Admissions and Requests for Production of Documents by the due date.

Enclosed with the confirmation copy of this letter are Registrant's Documents No. VGO 000671 - 000750. You should note that Doc's VGO000671 - 000678 are marked "Confidential - Attorney's Eyes Only." Also enclosed is the signed verification page from Applicant's Amended Response to Opposer's First Set of Interrogatories.

If there are any other questions, do not hesitate to contact us.

Very truly yours,



Barbara A. Barakat

Enclosures

cc: Thomas F. Dunn, Esq. (w/o enclosures)  
Michael J. Bevilacqua, Esq. (w/o enclosures)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	)	
Valeritas, Inc.,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92054171
	)	
Vgo Communications, Inc.,	)	
	)	
Registrant	)	
_____	)	

**REGISTRANT VGO COMMUNICATIONS, INC.’S SECOND AMENDED RESPONSE  
TO PETITIONER VALERITAS, INC.’S FIRST SET OF INTERROGATORIES TO  
REGISTRANT**

Subject to the qualifications and the General Objections as listed in Registrant’s Response to Petitioner’s First Set of Interrogatories and the specific objections made below, Registrant updates its earlier Responses to Petitioner’s First Set of Interrogatories to Registrant as follows. These responses are confidential and designated “CONFIDENTIAL – FOR ATTORNEYS EYES ONLY.”

CONFIDENTIAL – FOR ATTORNEYS EYES ONLY

RESPONSES

INTERROGATORY NO. 5:

State all facts concerning VCI's channels of trade, including but not limited to identifying all channels through which VCI's goods are sold, whether online, through retail outlets (and if so, identify the retail outlets), trade shows, consumer shows, through the medical and/or health care profession, and/or otherwise, and listing the percentages of VCI's sales, by unit and dollar volume, for each such channel of trade.

RESPONSE TO INTERROGATORY NO. 5:

VCI incorporates all of its General Objections and, specifically, General Objections 1, 4 and 7. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. VCI also objects to this interrogatory to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, in that the phrase "through the medical and/or health care profession" is unclear and therefore cannot be answered. Subject to, and without waiving these objections, VCI responds as follows: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Verification**

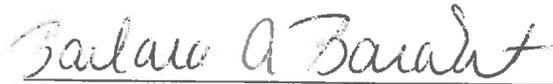
On behalf of Vgo Communications, Inc., and in my capacity as \_\_\_\_\_, I have read the foregoing responses to Petitioner Valeritas, Inc.'s First Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact contained herein. The response was prepared with the assistance of Vgo Communications, Inc.'s employees and with the assistance and advice of counsel. The answers are based on records and information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent I do not have personal knowledge, I have relied on others to gather the responsive information. I declare under penalty of perjury that the foregoing is true and correct.

Signed this \_\_\_\_ day of September, 2012

\_\_\_\_\_  
Name:  
Title:

As to objections

VGO COMMUNICATIONS, INC.  
By its attorneys,



Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: September 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's First Set of Interrogatories to Registrant was served by first-class mail, postage-prepaid, this 10th<sup>nd</sup> day of September, 2012 upon:

Sheri S. Mason, Esq.  
Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
1601 Trapelo Road, Suite 205  
Waltham, Massachusetts 02451

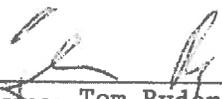


Barbara A. Barakat

**Verification**

On behalf of Vgo Communications, Inc., and in my capacity as COO, I have read the foregoing responses to Petitioner Valeritas, Inc.'s First Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact contained herein. The response was prepared with the assistance of Vgo Communications, Inc.'s employees and with the assistance and advice of counsel. The answers are based on records and information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent I do not have personal knowledge, I have relied on others to gather the responsive information. I declare under penalty of perjury that the foregoing is true and correct.

Signed this 30 day of August , 2012

  
\_\_\_\_\_  
Name: Tom Ryden  
Title: Chief Operations Officer

WALTHAM-ADV001

WILMERHALE

September 13, 2012

**Barbara A. Barakat**

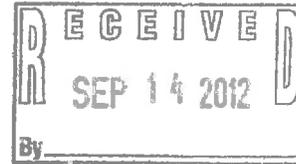
**By First Class Mail**

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barbara.barakat@wilmerhale.com

Sheri S. Mason, Esq.  
Morse Barnes-Brown Pendleton PC  
CityPoint  
230 Third Avenue, 4th Floor  
Waltham, Massachusetts 02451



Re: Valeritas. Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171

Dear Sheri:

In connection with Registrant's Second Amended Response to Petitioner's First Set of Interrogatories to Registrant, enclosed is Mr. Ryden's signed verification page.

If there are any other questions, do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara A. Barakat".

Barbara A. Barakat

Enclosures

cc: Thomas F. Dunn, Esq. (w/o enclosures)  
Michael J. Bevilacqua, Esq. (w/o enclosures)

**Verification**

On behalf of Vgo Communications, Inc., and in my capacity as  
COO, I have read the foregoing responses to Petitioner Valeritas, Inc.'s  
First Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact  
contained herein. The response was prepared with the assistance of Vgo Communications, Inc.'s  
employees and with the assistance and advice of counsel. The answers are based on records and  
information currently available. I reserve the right to make changes in or additions to any of  
these answers if it appears at any time that errors or omissions have been made or if more  
accurate or complete information becomes available. To the extent I do not have personal  
knowledge, I have relied on others to gather the responsive information. I declare under penalty  
of perjury that the foregoing is true and correct.

Signed this 12 day of September, 2012



Name: Tom Ryden

Title: COO

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Valeritas, Inc.,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92054171
	)	
Vgo Communications, Inc.,	)	
	)	
Registrant	)	

**REGISTRANT VGO COMMUNICATIONS, INC.'S RESPONSES TO PETITIONER  
VALERITAS, INC.'S SECOND SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS AND THINGS TO REGISTRANT**

Subject to the forgoing qualifications, General Objections as listed in Registrant's Response to Petitioner's First Set of Requests for Production of Documents and the specific objections made below, VCI answers Petitioner's Second Set of Request for Production of Documents and Things as follows:

**RESPONSES**

**REQUEST FOR PRODUCTION NO. 43**

Produce all Documents and Things concerning any other designs and/or logos VCI considered adopting for use in association with any of its goods or services.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 43**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3, and 4. In particular, VCI objects to this Document Request to the extent that it requests

documents that constitute confidential or private business information and documents that fall under the attorney/client privilege, the attorney work-product doctrine or another applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents currently in the possession of VCI.

#### **REQUEST FOR PRODUCTION NO. 44**

Produce all Documents and Things concerning the mark V-GO, as depicted in the U.S. Trademark Application Serial No. 77/752,694, including but not limited to any and all correspondence concerning the same.

#### **RESPONSE TO REQUEST FOR PRODUCTION 44**

VCI incorporates all of its General Objections and specifically, General Objection No. 2 and 3. In particular, VCI objects to this Document Request to the extent that it requests documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents responsive to this Request that Petitioner would not already have in its possession.

**REQUEST FOR PRODUCTION NO. 45**

Produce all Produce all Documents and Things concerning the mark V-GO DISPOSABLE INSULIN DELIVERY & Design, as depicted in the U.S. Trademark Application Serial No. 77/752,697, including but not limited to any and all correspondence concerning the same.

**RESPONSE TO REQUEST FOR PRODUCTION 45**

VCI incorporates all of its General Objections and specifically, General Objection No. 2 and 3. In particular, VCI objects to this Document Request to the extent that it requests documents and things that are not within its possession, custody or control and/or are a matter of public record, are within the files and/or particular knowledge of Petitioner, its counsel, or agents, or are otherwise equally available to Petitioner. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Without waiving, and subject to, these objections, VCI responds as follows: There are no such documents responsive to this Request that Petitioner would not already have in its possession.

**REQUEST FOR PRODUCTION NO. 46**

Produce all Documents and Things identified in VCI's Responses to Valeritas' Second Set of Interrogatories.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 46**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Document Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive,

requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VGO responds as follows: VCI will produce non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

**REQUEST FOR PRODUCTION NO. 47**

With respect to Valeritas' Second Set of Requests for Admissions to VGo Communications, Inc., for each request that is not unqualifiedly admitted, produce all Documents and Things that support VCI's reasons for not unqualifiedly admitting the request.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 47**

VCI incorporates all of its General Objections and specifically, General Objections No. 1, 3 and 4. In particular, VCI objects to this Document Request to the extent that it requests documents that constitute confidential or private business information. VCI also objects to this Request to the extent it seeks documents protected by attorney/client privilege, the attorney work product doctrine or any other applicable privilege. Further, VCI objects to this Document Request to the extent that it is overly broad, unduly burdensome, oppressive, requesting irrelevant documents, and/or those not reasonably calculated to lead to the discovery of admissible documents and/or information. Without waiving, and subject to, these objections, VCI responds as follows: VCI will produce non-privileged and otherwise non-objectionable documents, if any, responsive to this Request.

VGO COMMUNICATIONS, INC.  
By its attorneys,



---

Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: October 2, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's Second Request for Production of Documents were served by first-class mail, postage-prepaid, this 2<sup>nd</sup> day of October, 2012 upon:

Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Sheri S. Mason, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
1601 Trapelo Road, Suite 205  
Waltham, Massachusetts 02451



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Barbara A. Barakat

967M-ADV001

WILMERHALE

October 2, 2012

Barbara A. Barakat

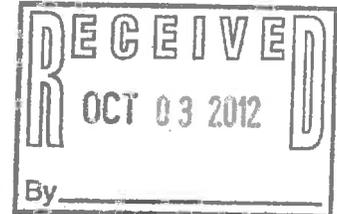
By First Class Mail

+1 617 526 6154(f)

+1 617 526 5000(f)

barbara.barakat@wilmerhale.com

Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Sheri S. Mason, Esq.  
Morse Barnes-Brown Pendleton PC  
230 Third Avenue, 4th Floor  
Waltham, Massachusetts 02451



Re: Valeritas, Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171

Dear Sheri:

Please find enclosed Registrant's responses to Petitioner's Second Set of Interrogatories, Requests for Admissions and Requests for Production of Documents to Registrant for this proceeding.

If there are any questions, do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara A. Barakat".

Barbara A. Barakat

Enclosures

cc: Michael J. Bevilacqua, Esq. (w/o enclosures)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Valeritas, Inc., )

Petitioner )

v. )

Vgo Communications, Inc., )

Registrant )

Cancellation No. 92054171

**REGISTRANT VGO COMMUNICATIONS, INC.'S RESPONSES TO PETITIONER  
VALERITAS, INC.'S SECOND SET OF INTERROGATORIES TO REGISTRANT**

Subject to the qualifications and the General Objections as listed in Registrant's Response to Petitioner's First Set of Interrogatories and the specific objections made below, VCI answers Petitioner Valeritas, Inc.'s Second Set of Interrogatories as follows.

**RESPONSES**

**INTERROGATORY NO. 13:**

State all facts concerning VCI's creation, selection and adoption of VCI's Design Mark, including but not limited to:

- (a) identifying all persons who were involved in the creation, selection and adoption of VCI's Design mark and stating each such person's role in the creation, selection and adoption of the mark; and

(b) identifying the date or dates upon which VCI's Design Mark was selected.

**RESPONSE TO INTERROGATORY NO. 13:**

VCI incorporates all of its General Objections and, specifically, General Objection 1. In particular, VCI objects to this Interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Subject to, and without waiving these objections, VCI responds as follows: An outside consultant, Doug Geer, designed VCI's Design Mark. He was commissioned in March 2010 and provided different designs for the VCI Design Mark to VCI. Many persons in the company considered the various designs, but Ned Semonite, VP Marketing of VCI made the final selection for VCI's Design Mark on April 28, 2010.

**INTERROGATORY NO. 14:**

State all facts concerning how VCI's goods and/or services are marketed, promoted, offered and/or sold to the medical and/or health care communities, describing whether and how VCI's goods are marketed, promoted, offered, and/or sold to doctors, hospitals, health insurers, and/or patients.

**RESPONSE TO INTERROGATORY NO. 14:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this Interrogatory to the extent that it requests to the extent they seek information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Finally, VCI objects to this Interrogatory because it is duplicative of Interrogatories 5 and 9. Subject to, and without

waiving these objections, VCI responds as follows: VCI attends tradeshows related to telemedicine and telehealth. VCI uses direct mail to contact hospital's telemedicine, telehealth, audio visual, video communications or IT departments. VCI also has sales persons contact hospital's telemedicine, telehealth, audio visual, video communications or IT departments to describe the products. Customers purchase VCI products directly from VCI or through VCI's value added resellers.

**INTERROGATORY NO. 15:**

State all facts concerning VCI's relationship with companies in the field of treating, evaluating, diagnosing, and/or counseling patients with diabetes, including but not limited to PositiveID Corporation.

**RESPONSE TO INTERROGATORY NO. 15:**

VCI incorporates all of its General Objections and, specifically, General Objections 1, 4 and 7. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence, in that it is impossible for VCI to identify "all persons with knowledge of Valeritas' use of Valeritas' Mark." Additionally, VCI objects to this interrogatory to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, as the term "relationship" is unclear. Subject to, and without waiving these objections, and assuming that "relationship" means an ongoing business communication, VCI responds as follows: VCI has no relationship with companies in the field of treating, evaluating, diagnosing, and/or counseling patients with diabetes, including but not limited to PositiveID Corporation.

**INTERROGATORY NO. 16:**

State all facts concerning the joint demonstration with PositiveID Corporation's wireless communication device for diabetes management operating in conjunction with VCI's robotic telepresence.

**RESPONSE TO INTERROGATORY NO. 16:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 7. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this interrogatory to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, as it suggests that PositiveID Corporation's wireless communication device for diabetes management works in conjunction with VCI's product and that is not the case. Subject to, and without waiving these objections, VCI responds as follows: PositiveID invited VCI to do a demonstration at the American Telemedicine Conference at PositiveID's booth at that conference but not in conjunction with PositiveID Corporations' wireless communications device for diabetes management.

**INTERROGATORY NO. 17:**

State all facts concerning VCI's connection with ExL Pharmaceutical Conferences.

**RESPONSE TO INTERROGATORY NO. 17:**

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 7. In particular, VCI objects to this interrogatory to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this interrogatory to the extent that it contains words or phrases that alack an apparent meaning or have an uncertain meaning, in that the term "connection with" is unclear. Subject to, and

without waiving these objections, VCI responds as follows: VCI has no connection with ExL Pharmaceutical Conferences.

**Verification**

On behalf of Vgo Communications, Inc., and in my capacity as  
COO, I have read the foregoing responses to Petitioner Valeritas, Inc.'s  
Second Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact  
contained herein. The response was prepared with the assistance of Vgo Communications, Inc.'s  
employees and with the assistance and advice of counsel. The answers are based on records and  
information currently available. I reserve the right to make changes in or additions to any of  
these answers if it appears at any time that errors or omissions have been made or if more  
accurate or complete information becomes available. To the extent I do not have personal  
knowledge, I have relied on others to gather the responsive information. I declare under penalty  
of perjury that the foregoing is true and correct.

Signed this 1 day of October, 2012

  
\_\_\_\_\_  
Name:  
Title: COO

As to objections

VGO COMMUNICATIONS, INC.  
By its attorneys,



Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: October 2, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's Second Set of Interrogatories to Registrant was served by first-class mail, postage-prepaid, this 2<sup>nd</sup> day of October, 2012 upon:

Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Sheri S. Mason, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
230 Third Avenue, 4<sup>th</sup> Floor  
Waltham, Massachusetts 02451



Barbara A. Barakat

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	)	
Valeritas, Inc.,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92054171
	)	
Vgo Communications, Inc.,	)	
	)	
Registrant	)	
_____	)	

**REGISTRANT VGO COMMUNICATIONS, INC.'S RESPONSES TO PETITIONER  
VALERITAS, INC.'S SECOND SET OF REQUESTS FOR ADMISSIONS TO VGO  
COMMUNICATIONS, INC.**

Subject to the qualifications and the General Objections as listed in Registrant's Response to Petitioner's First Set of Requests for Admissions and the specific objections made below, VCI answers Petitioner's Second Set of Requests for Admissions as follows.

**RESPONSES**

**REQUEST FOR ADMISSION NO. 23:**

Admit that VCI did not consider any marks other than the VCI Mark and the VCI Design.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

VCI incorporates all of its Objections, and specifically, General Objection Nos. 1 and 3. In particular, VCI objects to this Request on the ground to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to

trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Subject to and without waiving the foregoing General Objections and Specific Objections, to the extent a response is required, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 24:**

Admit VCI collaborated with a company named PositiveID Corporation.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

VCI incorporates all of its Objections, and specifically, General Objection No. 7. In addition to the foregoing General Objections, VCI objects to this Request to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, in that the meaning of the phrase “collaborated with” is unclear. Subject to and without waiving the foregoing General Objections and Specific Objection, to the extent a response is required, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 25:**

Admit that VCI hosted a joint demonstration with PositiveID Corporation’s wireless communication device for diabetes management operating in conjunction with VCI’s robotic telepresence.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

VCI incorporates all of its Objections, and specifically, General Objection No. 7. VCI objects to this Request to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, in that the meaning of the phrase “hosted a joint demonstration” is unclear. Subject to and without waiving the foregoing General Objections and specific Objection, VCI admits that it did participate in a demonstration with PositiveID

Corporation but not with its wireless communications device. VCI otherwise denies this Request.

**REQUEST FOR ADMISSION NO. 26:**

Admit that Valeritas' Mark in standard characters appeared in at least one screening search for VCI's Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

VCI incorporates all of its Objections, and specifically, General Objections 1 and 3. In particular, VCI objects to this Request on the ground to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Subject to and without waiving the foregoing General Objections and Specific Objections, VCI admits that Valeritas' Mark in standard characters appeared in at least one screening search for VCI's Mark.

**REQUEST FOR ADMISSION NO. 27:**

Admit that Valeritas' Mark (with design) appeared in at least one screening search for VCI's Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

VCI incorporates all of its Objections, and specifically, General Objections 1 and 3. In particular, VCI objects to this Request on the ground to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Subject to and without waiving the

foregoing General Objections and Specific Objections, VCI admits that Valeritas' Mark (with design) appeared in at least one screening search for VCI's Mark.

**REQUEST FOR ADMISSION NO. 28:**

Admit that VCI had actual notice of Valeritas' Mark in standard character.

**RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

In addition to the foregoing General Objections, VCI objects to this Request on the ground that it calls for a legal conclusion rather than an admission of fact. As such, VCI will not respond to this Request.

**REQUEST FOR ADMISSION NO. 29:**

Admit that VCI had actual notice of Valeritas' Mark (with design), which includes a pending application for the same.

**RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

In addition to the foregoing General Objections, VCI objects to this Request on the ground that it calls for a legal conclusion rather than an admission of fact. As such, VCI will not respond to this Request.

**REQUEST FOR ADMISSION NO. 30:**

Admit that Ned Semonite selected the VCI Mark and the VCI Design Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

VCI incorporates all of its Objections, and specifically, General Objection No. 1. In particular, VCI objects to this Request on the ground to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. Subject to and without waiving the foregoing General Objections and Specific Objection, VCI admits this Request.

**REQUEST FOR ADMISSION NO. 31:**

Admit that Ned Semonite had access to VCI's trademark screening search results.

**RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

VCI incorporates all of its Objections, and specifically, General Objections 1 and 3. In particular, VCI objects to this Request on the ground to the extent that it seeks information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Request to the extent that it seeks information protected by attorney/client privilege, the attorney work-product doctrine, or any other applicable privilege. Subject to and without waiving the foregoing General Objections and Specific Objections, VCI denies this Request.

**REQUEST FOR ADMISSION NO. 32:**

Admit that VCI's product may be used by healthcare professionals in the course of treating, evaluating, diagnosing and/or counseling medical patients.

**RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

VCI incorporates all of its Objections, and specifically, General Objection No. 7. VCI objects to this Request to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, in that the meaning of the phrase "used by healthcare professionals in the course of treating, evaluating, diagnosing and/or counseling medical patients" is unclear. Subject to and without waiving the foregoing General Objections and Specific Objection, VCI admits that VCI's products may be used by healthcare professionals for two way audio video communications in the course of treating, evaluating, diagnosing and/or counseling medical patients. VCI otherwise denies this Request.

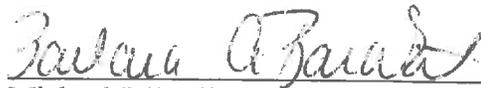
**REQUEST FOR ADMISSION NO. 33:**

Admit that VCI's product may be used by healthcare professionals in the course of treating, evaluating, diagnosing and/or counseling patients with diabetes.

**RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

VCI incorporates all of its Objections, and specifically, General Objection No. 7. VCI objects to this Request to the extent that it contains words or phrases that lack an apparent meaning or have an uncertain meaning, in that the meaning of the phrase “used by healthcare professionals in the course of treating, evaluating, diagnosing and/or counseling patients with diabetes” is unclear. Subject to and without waiving the foregoing General Objections and Specific Objection, VCI admits that VCI’s products may be used by healthcare professionals for two way audio video communications in the course of treating, evaluating, diagnosing and/or counseling patients with diabetes. VCI otherwise denies this Request.

VGO COMMUNICATIONS, INC.  
By its attorneys,



Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: October 2, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's Second Request for Admissions were served by first-class mail, postage-prepaid, this 2<sup>nd</sup> day of October, 2012 upon:

Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Sheri S. Mason, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
230 Third Avenue, 4<sup>th</sup> Floor  
Waltham, Massachusetts 02451

  
\_\_\_\_\_  
Barbara A. Barakat

# **EXHIBIT 2**

August 2, 2012

**VIA FED EX AND EMAIL**

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

**Re: Valeritas, Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171  
Our Ref.: VALTM-ADV001**

Dear Mr. Bevilacqua:

We write regarding deficiencies in VGO Communications, Inc.'s ("VCI" or "Respondant") responses to Valeritas, Inc.'s ("Valertias" or "Petitioner") first set of requests for admissions, interrogatories, and production of documents and things in the above-referenced trademark opposition proceeding before the Trademark Trial and Appeal Board ("TTAB"). It is imperative that we resolve these deficiencies as soon as possible.

If VCI does not agree to remedy the deficiencies promptly, Valeritas will have no choice but to file with the TTAB a motion to compel full and accurate responses. Accordingly, we request you remedy these deficiencies within **10 days of receipt of this letter**. The deficiencies in those responses are set forth below in some detail.

We served the first set of requests for production of documents on December 21, 2011. Thus, the responses were due on January 25, 2012 (30 days from the date of service plus five additional days because the requests were served by mail; *see* Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §§ 113.05 and 403.03; 37 C.F.R. §§ 2.119(c) and 2.120(a)). We consented to a 30-day extension followed by a 14 day extension to respond to discovery requests. Thus, the responses were due on March 11, 2012. VCI's responses and certificates of service are dated March 8, 2012. However, the responses were deficient as discussed in more detail below.

Specific deficiencies in VCI's discovery responses include, but are not necessarily limited to, the following:

August 2, 2012

Valeritas, Inc. v. VGO Communications, Inc.

### **Interrogatories**

**Interrogatory No. 1** requests that VCI state all facts concerning VCI's adoption of VCI's Mark, including, but not limited to (a) identifying all personal who were involved in the selection of the mark and state such person's role in the selection of the mark; (b) identifying the date or dates upon which the mark was selected; and (c) stating whether any trademark searches were conducted with the adoption of the mark, and if so, identifying the person(s) who conducted the search(es), whether or not such person(s) were attorneys, and identifying any search reports that were generated as a result of the search(es).

VCI's Mark is defined as "any mark allegedly owned by VCI that includes the word VGO in any form, including but not limited to the VGO mark as depicted in the following design:



for use on 'robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems.'"

It is unclear from VCI's response whether Ned Semonite selected both the standard character mark and the VGO mark depicted in the above design (hereinafter "VCI's VGO Design Mark"). Therefore, VCI must respond to this interrogatory concerning both the VGO standard character mark and VCI's VGO Design Mark.

**Interrogatory No. 2** requests that VCI identify each and every good and/or service advertised, promoted, distributed, offered, and/or sold by VCI in the United States under or in connection with VCI's Mark, and for each such good or service, state: (a) The date of first use in commerce of VCI's Mark in connection with the identified good or service; (b) The sales by unit volume, by month and year, for each year since such sales began; (c) The gross revenue, by month and year, for each year since such sales began; (d) The approximate annual dollar amount expensed each year to date by VCI in advertising and promoting each identified good or service under VCI's Mark; and, (e) The approximate annual dollar amount VCI expects to be spent in advertising and promoting VCI's goods and/or services in connection with VCI's Mark for each year from 2012 through 2016. VCI objected to the Interrogatory on the grounds that the information that constitutes confidential or private business information. To the extent that information is confidential and/or private, a response is still required. Second, VCI stated that it would provide documents and things responsive to Interrogatory 2(b) and (c) but has not produced these documents and things.

The **Verification** is missing the printed name of the signatory. Therefore, VCI must confirm if that the signatory is Tom Ryden, who is listed as the C.O.O. on VCI's website, or if not, the identity of the signatory.

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Valeritas, Inc. v. VGO Communications, Inc.

### **Requests for Production of Documents and Things**

VCI's responses to Valeritas' first set of requests for production of documents and things are also insufficient. In VCI's March 8, 2012 responses, in some cases VCI identified specific documents and things that it had in its possession but would produce at a later date. Valeritas has not received these documents and things. In other cases, VCI failed to produce all documents requested.

**Request for Production No. 1** seeks production of documents and things concerning VCI's selection, adoption and creation of VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request for VCI's Mark, which includes VCI's VGO Design Mark.

**Request for Production No. 2** seeks production of documents and things concerning VCI's research regarding registrability and clearance of VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI produced documents and things for VCI's Mark in standard characters. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request for VCI's Mark, which includes VCI's VGO Design Mark.

**Request for Production No. 3** seeks production of documents and things concerning any formal or informal trademark searches or investigations concerning VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI produced documents and things for VCI's Mark in standard characters. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request for VCI's Mark, which includes the VCI's VGO Design Mark.

**Request for Production No. 5** seeks production of documents and things concerning any other trademark VCI considered adopting for use in association with any of its goods or services. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request, including without limitation any and all designs and/or logos that were considered.

**Request for Production No. 7** seeks VCI to produce two samples of each and every good upon which VCI uses VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request for VCI's Mark, which includes VCI's VGO Design Mark. Valeritas will accept as an initial response detailed photographs of the products, packaging, and

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Valeritas, Inc. v. VGO Communications, Inc.

copies of all the documents shipped with the products, including without limitation all instances in which the VCI Mark, including VCI's VGO Design, is displayed on the products and packaging. Valeritas reserves the right to inspect product samples.

**Request for Production No. 9** seeks production of documents and things concerning VCI's corporate ownership structure. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

**Request for Production No. 17** seeks production of documents and things concerning any advertisements VCI placed in any magazine or other publication in any formation, whether print, online, or in any other format. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. While VCI submitted some documents, the submission is insufficient because it failed to include any advertisements that were placed in magazines or heard on the radio and/or on television. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

**Request for Production No. 18** seeks production of documents and things concerning any news or feature stories about VCI and/or products sold under VCI's Mark that have appeared in any magazine or other publication in any format, whether print, online, or in any other format. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. While VCI submitted some documents, the submission is insufficient. For example, VCI's product was featured in a Sports Illustrated article and while VCI produced the online version of the article, VCI failed to produce the printed version of the article, which may contain the VCI Design Mark. Further, VCI failed to produce any articles or press releases concerning its partnership with Positive ID Corporation. Finally, VCI failed to produce documents and things of any news or feature stories about VCI and/or products sold under the VCI Mark that have been covered by television and/or radio. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

**Request for Production No. 20** seeks production of documents and things concerning VCI's marketing plans for VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

**Request for Production No. 22** seeks production of documents and things concerning or identifying VCI's competitors in the marketplace. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

August 2, 2012

Valeritas, Inc. v. VGO Communications, Inc.

**Request for Production No. 24** seeks production of documents and things the circumstances under which VCI first learned of Valeritas and/or Valeritas' VGO mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. The only documents and things produced containing Valeritas' VGO mark was VCI's search results; however it is unclear whether this is when VCI first learned of Valeritas' VGO mark. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

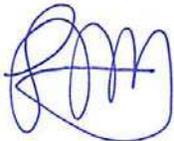
**Request for Production No. 29** seeks production of documents and things describing the channels of trade for the distribution of VCI's goods and/or services under VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request, including without limitation information concerning medical organizations, hospitals, clinics, healthcare professionals, and/or organizations, institutions, and/or health care professionals that use VCI's goods and/or services in the course of diagnostic, treatment, and/or care.

**Request for Production No. 32** seeks production of documents and things concerning contracts or agreements with affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, doctors, wholesalers, and/or retailers through whom VCI markets and sells its goods and services under VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

**Request for Production No. 37** seeks production of documents and things identifying each and every employee and/or agent of VCI's charged with responsibility for VCI's Mark and/or describing any such employee's or agent's duties with respect to VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

We look forward to your supplementation of discovery requests to resolve the deficiencies **within 10 days of receipt of this letter.**

Sincerely,



Sheri S. Mason

cc: Thomas F. Dunn, Esq.

WILMERHALE

August 22, 2012

**Barbara A. Barakat**

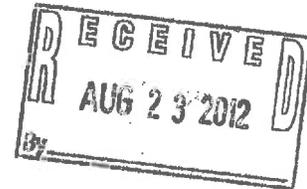
**By First Class Mail**

+1 617 526 6154(t)

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barbara.barakat@wilmerhale.com

Sheri S. Mason, Esq.  
Morse Barnes-Brown Pendleton PC  
CityPoint  
230 Third Avenue, 4th Floor  
Waltham, Massachusetts 02451



Re: Valeritas, Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171

Dear Sheri:

Enclosed please find:

Registrant's Amended Response to Interrogatory No. 2, and  
Registrant's Documents No. VGO 000664-670.

If you have any questions, do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Barbara A. Barakat". The signature is written in dark ink and is positioned above the printed name.

Barbara A. Barakat

Enclosures

cc: Thomas F. Dunn, Esq. (w/o enclosures)  
Michael J. Bevilacqua, Esq. (w/o enclosures)

Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109

Beijing Berlin Boston Brussels Frankfurt London Los Angeles New York Oxford Palo Alto Waltham Washington

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	)	
Valeritas, Inc.,	)	
Petitioner	)	
v.	)	Cancellation No. 92054171
Vgo Communications, Inc.,	)	
Registrant	)	
_____	)	

**REGISTRANT VGO COMMUNICATIONS, INC.’S AMENDED RESPONSE TO  
PETITIONER VALERITAS, INC.’S FIRST SET OF INTERROGATORIES TO  
REGISTRANT**

Subject to the qualifications and the General Objections as listed in Registrant’s Response to Petitioner’s First Set of Interrogatories and the specific objections made below, Registrant updates its earlier Responses to Petitioner’s First Set of Interrogatories to Registrant as follows. These responses are confidential and designated “CONFIDENTIAL – FOR ATTORNEYS EYES ONLY.”

CONFIDENTIAL – FOR ATTORNEYS EYES ONLY

RESPONSES

INTERROGATORY NO. 2:

Identify each and every good and/or service advertised, promoted, distributed, offered, and/or sold by VCI in the United States under or in connection with VCI's Mark, and for each such good or service, state:

- (a) The date of first use in commerce of VCI's Mark in connection with the identified good or service;
- (b) The sales by unit volume, by month and year, for each year since such sales began;
- (c) The gross revenue, by month and year, for each year since such sales began;
- (d) The approximate annual dollar amount expended each year to date by VCI in advertising and promoting each identified good or service under VCI; Mark; and
- (e) The approximate annual dollar amount VCI expects to be spent in advertising and promoting VCI's goods and/or services in connection with VCI's Mark for each year from 2012 through 2016.

RESPONSE TO INTERROGATORY NO. 2:

VCI incorporates all of its General Objections and, specifically, General Objections 1 and 4. In particular, VCI objects to this Interrogatory to the extent that it requests to the extent they seek information that constitutes confidential or private business information, including information pertaining to trade secrets, business decisions, and/or competitively sensitive information. VCI also objects to this Interrogatory to the extent that it is unreasonably broad, unduly burdensome, oppressive, requests irrelevant information and/or is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, VCI responds as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL – FOR ATTORNEYS EYES ONLY

**Verification**

On behalf of Vgo Communications, Inc., and in my capacity as \_\_\_\_\_, I have read the foregoing responses to Petitioner Valeritas, Inc.'s First Set of Interrogatories. I do not necessarily have direct personal knowledge of every fact contained herein. The response was prepared with the assistance of Vgo Communications, Inc.'s employees and with the assistance and advice of counsel. The answers are based on records and information currently available. I reserve the right to make changes in or additions to any of these answers if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent I do not have personal knowledge, I have relied on others to gather the responsive information. I declare under penalty of perjury that the foregoing is true and correct.

Signed this \_\_\_\_ day of August , 2012

\_\_\_\_\_  
Name:  
Title:

As to objections

VGO COMMUNICATIONS, INC.  
By its attorneys,

  
\_\_\_\_\_  
Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Date: August 22, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Responses to Petitioner's First Set of Interrogatories to Registrant was served by first-class mail, postage-prepaid, this 22<sup>nd</sup> day of August, 2012 upon:

Sheri S. Mason, Esq.  
Gregory M. Krakau, Esq.  
Thomas F. Dunn, Esq.  
Faith D. Kasparian, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
1601 Trapelo Road, Suite 205  
Waltham, Massachusetts 02451

  
\_\_\_\_\_  
Barbara A. Barakat

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FROM THE DIRECTORS OF  
**LITTLE MISS SUNSHINE**

September 4, 2010

## The Boss Is Robotic, and Rolling Up Behind You

By JOHN MARKOFF

SACRAMENTO — Dr. Alan Shatzel's pager beeped at 9 on a Saturday morning. A man had suffered a stroke, and someone had to decide, quickly, whether to give him an anticlotting drug that could mean the difference between life and death.

Dr. Shatzel, a neurologist, hustled not to the emergency room where the patient lay — 260 miles away, in Bakersfield — but to a darkened room at a hospital here. He took a seat in front of the latest tools of his trade: computer monitors, a keyboard and a joystick that control his assistant on the scene — a robot on wheels.

He guided the roughly five-foot-tall machine, which has a large monitor as its "head," into the patient's room in Bakersfield. Dr. Shatzel's face appeared on screen, and his voice issued from a speaker.

Dr. Shatzel acknowledged the nurse and introduced himself to the patient's grandson, explaining that he would question the patient to determine whether he was a candidate for the drug. The robot's stereophonic hearing conveyed the answers. Using the hypersensitive camera on the monitor, Dr. Shatzel zoomed in and out and swung the display left and right, much as if he were turning his head to look around the room.

For years, the military and law enforcement agencies have used specialized robots to disarm bombs and carry out other dangerous missions. This summer, such systems helped seal a BP well a mile below the surface of the Gulf of Mexico. Now, with rapidly falling costs, the next frontiers are the office, the hospital and the home.

Mobile robots are now being used in hundreds of hospitals nationwide as the eyes, ears and voices of doctors who cannot be there in person. They are being rolled out in workplaces, allowing employees in disparate locales to communicate more easily and letting managers supervise employees from afar. And they are being tested as caregivers in assisted-living centers.

“Computers are beginning to grow wheels and roll around in the environment,” said Jeanne Dietsch, a veteran roboticist and co-founder of MobileRobots Inc., a robot maker in Amherst, N.H., and a division of Adept Technologies.

Skeptics say these machines do not represent a great improvement over video teleconferencing. But advocates say the experience is substantially better, shifting control of space and time to the remote user.

“Most of the existing videoconferencing technology is designed for meetings,” said Pamela J. Hinds, co-director at the Center for Work, Technology and Organization at Stanford University. “That is not where most work gets done.”

For now, most of the mobile robots, sometimes called telepresence robots, are little more than ventriloquists’ dummies with long, invisible strings. But some models have artificial intelligence that lets them do some things on their own, and they will inevitably grow smarter and more agile. They will not only represent the human users, they will augment them.

“The beauty of mobile telepresence is it challenges the notion of what it means to be somewhere,” said Colin Angle, chief executive of one of the largest robot manufacturers, iRobot.

The robot is what allowed Dr. Shatzel to “be” in the patient’s room far away. From an earlier telephone conversation with the emergency room doctor, the patient’s condition had not been clear. But in speaking directly with the patient, examining his face and control of his hands and glancing with the camera at the cardiac monitor in the room, Dr. Shatzel could assess the stroke, he said, with the same acuity as if he were there. He instructed the staff to administer the drug.

“We had a good outcome,” he said later.

Dr. John Whapham, a Loyola University neurologist who has helped create several regional networks providing telemedicine with robots made by InTouch Health, says that when he began using the robot during his residency, he would carry his laptop in a backpack so he could perform consultations anytime.

"I'll pull out the laptop, and when I'm on Michigan Avenue here in Chicago, put it on a garbage can or on the seat of a bus stop," he said. "You're live, and you can walk around, examine, image, zoom in and out. I do it all the time."

### **Expanding the Workplace**

"I'm very thin in this new outfit," Mike Beltzner says, breaking the ice in a room of Silicon Valley computer programmers. In the flesh, he is 2,200 miles away, at home in Toronto with his cat. But at this meeting his face appears on a 15-inch LCD atop a narrow aluminum machine resembling an upright vacuum cleaner. Indeed, as this robot rolls around the room it looks as if it could just as easily be sweeping.

Mr. Beltzner rolls the robot to a large conference table in the Mountain View headquarters of the Mozilla Corporation, maker of Firefox, a popular Web browser. By swiveling his camera eye back and forth, he can see the entire room and chats comfortably with the assembled team.

An hour earlier, Mr. Beltzner, director of Firefox, was logged into a different robot on the other side of the building to attend the weekly all-hands meeting. With a pink lei on one shoulder and a jaunty cap on the other, the robot was surrounded by more than 100 young software engineers, each sitting with a wirelessly connected laptop.

Aside from the occasional greeting, no one seems to notice the disembodied Mr. Beltzner until he is called upon by Mary Colvig, a Mozilla marketing manager. She wants employees to share the chore of leading tours of the office each week.

"What do you want me to do?" Mr. Beltzner asks, his voice piping from twin speakers in the robot's chest.

"I would like you to give tours," she responds from the front of the room. "That would be pretty insane."

When the meeting ends, “Robo-Beltzner” — as one colleague calls him — mingles in the large room, chatting. Then Mr. Beltzner executes a nifty pirouette and moves the robot, made by Willow Garage of Menlo Park, Calif., to a charging station.

Like many other Silicon Valley companies, Mozilla has employees around the world, and in the month since it began testing the system, as many as 10 employees have logged in to run errands, chat and attend meetings.

Mr. Beltzner has now used the Willow Garage robot for more than a month, usually four to six times a week to attend meetings and chat with his co-workers in Mountain View. He finds it to be a distinctly different experience from a video teleconference or a computer chat system.

“With the robot, I find that I’m getting the same kind of interpersonal connection during the meetings and the same kind of nonverbal contact” that he would get if he were in the room, he said. “It’s a lot easier to have harder conversations when I ‘roll the robot,’ ” he added, referring to reviewing an employee’s performance or discussing technical issues.

There are few drawbacks to the robots, the company’s employees agree, although Erica Jostedt, a Mozilla communications manager, notes that the virtual Mr. Beltzner is ruder than his flesh-and-blood Canadian counterpart.

“I came to a meeting with him, and he didn’t even open the door for me!” she said, laughing.

The robot, of course, has no arms.

That has not stopped other programmers from commuting to Silicon Valley robotically.

Each morning for the past year, Chad Evans’s robot has sat with its back to a freeway in a double aisle of cubicles occupied by software designers at Philips Healthcare in Foster City, Calif.

Mr. Evans, a software designer himself, sits more than 2,000 miles away at home in Atlanta. But “Chadbot,” a four-foot-tall prototype built by RoboDynamics of Santa Monica, Calif., allows him to live where he chooses and work West Coast hours.

When he is sitting at his desk in Atlanta, Mr. Evans is visible in a small monitor at the top of the robot, which is usually plugged into a recharging station. His workmates can see at a glance whether he is available for a quick chat by simply peering down the aisle.

When Mr. Evans needs to go to a meeting in Foster City or visit a colleague, he drives the robot to a desk or a meeting room. If someone is willing to help him by pressing the elevator buttons, he can even visit other floors.

“Using Skype would require me to initiate a phone call,” he said. “This gives me more of a passive ability. I’m just sitting here like I would be at my desk if I was in the office. I see people coming and going, and they see me and they think, ‘Oh yeah, there was something I wanted to ask Chad.’ ”

It took a while for his co-workers to get used to Chad as Chadbot. “The first three weeks were the weirdest experience I’ve ever had,” said Karl McGuinness, a software architect whose desk is adjacent to the robot. “You’d hear his voice, and I’d think, ‘What the heck is going on?’ ”

### **The Boss, or Big Brother?**

Tom Serani’s boss had grown frustrated that while Mr. Serani was on the road, his 20 salespeople working the phones back at company headquarters did not have the same zip as when he was in the office.

“The new guys were not doing quite as well,” said the boss, Neal Creighton, a co-founder of RatePoint, a company based in Needham, Mass., that tracks Internet users’ opinions of products and companies.

When RatePoint was approached by Vgo Communications to test a mobile robot, Mr. Creighton jumped at the chance.

From his hotel room, Mr. Serani can roll a robot up to an office cubicle back at headquarters, listen in on a telephone sales pitch and offer advice.

Mr. Serani was initially skeptical. “I immediately saw the potential,” he said. “It was more a question of ‘How do I position this so I don’t have my guys running out of the building calling

the local reporters about how insane I am?’ ”

But in practice, he said: “Our sales team responded a lot differently to the robot than they did to the speakerphone. They were looking at it like it was a person, and their behavior patterns were completely different when it was here.”

Still, the possibility that remotely operated robots might be used by some managers as surveillance devices, or as peeping Toms, has made some in the fledgling industry nervous.

“I don’t want this technology to be seen as a means of oppression,” said Trevor Blackwell, founder and chief executive of Anybots, the maker of QB, a \$15,000 mobile robot that balances on two wheels like a Segway and will be shipped commercially beginning this fall.

Others argue that the design of a robot determines how it will be perceived in the workplace. “Larger screens for showing the pilot’s video create a greater sense of presence, whereas little to none suggests surveillance,” said Sanford Dickert, a Willow Garage executive.

There are also skeptics about the value of the current generation of mobile robots. “It’s cool, but it’s a little gimmicky,” said Michael Arrington, founder and co-editor of the technology news Web site TechCrunch. Although he now lives much of the year in Seattle and manages his Silicon Valley Web site from afar, he said he would consider the robot as a stunt, perhaps for an interview, but not for running his company.

“You can walk around, but you can’t really see what’s going on,” he said.

### **A Tool for the Elderly**

All five of the United States companies that have announced or are already selling mobile robots are adding or experimenting with automation. For example, it will not be unusual for mobile robots in the next year to feature collision avoidance and lane-following technologies like those now offered in luxury automobiles. Already Vgo’s robot automatically parks itself when it is driven within a foot or two of its recharging station.

Such automated robots could help in caring for a rapidly aging population.

Vgo's executives said they ultimately envisioned their robots being used by family members to pay visits and offer help to elderly parents, allowing them to remain independent longer. At the simplest, the Vgo robots could help workers in assisted-living homes check in on residents and make sure they were taking medicines at the correct time each day.

"We're not replacing low-cost labor," said Brad Kayton, Vgo's chief executive. "We're acting as a supplement for it."

Others see the robots as a new means of mobility for the elderly, allowing them to stay in better contact with friends and family and visit museums and theaters, among other possible applications.

As technology advances, designers say, mobile robots will allow the elderly and others to do more than be in two places at one time. The robots will augment their human users, enhancing their senses by offering capabilities like better vision and hearing as well as futuristic skills like face recognition.

Still, no one believes the telepresence robots will be accepted without some resistance.

Lou Mazzucchelli, an expert in video teleconferencing, suggested that workers might make fun of their robot-enhanced managers behind their backs.

Moreover, there may be unpredictable consequences. The robots might become a new target for frustrated colleagues. "All of these products," he said, "are just begging me to kick them over."

August 22, 2012

Barbara A. Barakat

**By E-mail**

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Sheri S. Mason, Esq.  
Morse Barnes-Brown Pendleton PC  
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Re: Valeritas, Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171

Dear Sheri:

This letter is responsive to your letter dated August 2, 2012, regarding the alleged deficiencies in the Registrant's responses to Valeritas' discovery requests. We will address the specific points raised in your letter.

**Interrogatories:**

Interrogatory No. 1: Valeritas has petitioned to cancel VGO Communications' Reg. No. 3,895,432 which is a Standard Character Mark. Registrant has responded to every question in this interrogatory as to the mark sought to be canceled. The line of questioning, as to the mark you identify as VCI's VGO Design Mark, is outside the scope of this proceeding, and therefore, Registrant is not obligated to answer this question as to the mark you identify as VCI's VGO Design Mark.

Interrogatory No. 2: Please Registrant's Amended Response to Interrogatory No. 2, served today.

The person who signed the Verification Page of the Responses to the Interrogatories is Tom Ryden.

**Requests for Production of Documents and Things:**

Registrant maintains that it has produced the documents in its possession that respond to Valeritas' requests applicable to this proceeding. Registrant has stated in its responses, and repeats herein, that Valeritas has petitioned to cancel VGO Communications' Reg. No. 3,895,432 which is a Standard Character Mark. Registrant has responded to every subpart in this interrogatory as to the mark sought to be canceled. The line of inquiry, as to the mark you identify as VCI's VGO Design Mark, is outside the scope of this proceeding, and therefore, Registrant is not obligated to answer this interrogatory as to the mark you identify as VCI's VGO

August 22, 2012

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Design Mark. This statement responds to your objections to Registrant's responses to Requests No. 1, 2, 3, 5 and 7.

In several instances, you appear to assume that a fact you have learned from the Internet must exist as a document and that document must be in our client's possession, custody and control. We have provided each document that our client has found to answer your requests. We have asked our client again about the specific facts you raise in this most recent letter, and if they do have any such additional documents in their possession, custody and control, we will provide them to you.

Request No. 7 asked for two samples of each and every good upon which VCI uses VCI's mark. VCI uses its mark in association with robotic video and audio communication hardware and computer software for use in connection with audio and video communication systems. VCI has produced documents showing the mark as used on every good upon which it uses its mark, see VGO 000196. The goods are very expensive pieces of equipment. If Petitioner's counsel wishes to examine the goods, we will make them available to you in our offices.

Registrant maintains that it has produced documents concerning VCI's corporate ownership structure. See, VGO-000153-176.

With respect to Request No. 17, Registrant objected to this Request as, among other things, burdensome and oppressive. Registrant has produced representative samples of its advertisements. See, VGO 000001-2, and 000262 – 283.

With respect to Request No. 18, Registrant objected to this Request as, among other things, burdensome and oppressive. Registrant has produced representative samples of news stories about its products. See, VGO 000177 – 261.

In response to Request No. 20 requesting marketing plans for the VCI Mark. If VGO has any written marketing plans, they will be provided.

In response to Request No. 22, Registrant has today served Documents No. VGO 000664-670, which were inadvertently omitted from the production of documents.

In response to Request No. 24 requesting documents concerning the circumstances under which VCI first learned of Valeritas and/or Valeritas Mark, Registrant stated that it would provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request. Registrant first learned of Valeritas' mark when it received your firm's letter dated January 21, 2011. As this letter is within the files of Petitioner, no further documents are responsive to this request.

August 22, 2012

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In response to Request No. 29 requesting documents evidencing the channels of trade for the distribution of goods and/or services under the VCI Mark, after noting applicable objections, Registrant stated that it would provide non-privileged and otherwise non-objectionable documents, if any, responsive to this Request. We have provided documents responsive to these discovery requests which show the channels of trade for the distribution of VGO's goods. See, for example, VGO 000001-000002, VGO 000177 – 000261 and VGO 000262 – 000271.

In response to Request No. 32, seeking documents concerning contracts or agreements with affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, doctors, wholesalers, and/or retailers through whom VCI markets and sells its goods and services under VCI's Mark, we have contacted our client and will provide documents they can find responsive to this request.

In response to Request No. 32, seeking documents identifying each and every employee and/or agent of VCI charged with responsibility for VCI's Mark and/or describing any such employee's or agent's duties with respect to VCI's Mark, there are no documents identifying each and every employee and/or agent of VCI charged with responsibility for VCI's Mark and/or describing any such employee's or agent's duties with respect to VCI's Mark.

If there are any other questions, do not hesitate to contact us.

Very truly yours,



Barbara A. Barakat

cc: Thomas F. Dunn, Esq.  
Michael J. Bevilacqua, Esq.

# **EXHIBIT 3**



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September 3, 2013

**BY EMAIL & FIRST-CLASS MAIL**

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

**Re: Valeritas, Inc. v. VGo Communications, Inc., TTAB Cancellation  
No. 92054171 – Second Request to Produce Documents**

Dear Counsel:

Having not received any documents in response to my letter of August 13, 2013, a copy of which is attached, I write for a second time to request that VGo Communications, Inc. (“VCI”) produce the relevant and discoverable documents described in my prior letter no later than September 13, 2013. As you know, the deposition of Doug Geer is scheduled for the following week and we need these documents to complete his deposition.

Furthermore, I request that you confirm by September 6<sup>th</sup> that VCI will produce all requested documents in its possession, custody or control by September 13<sup>th</sup> or provide an explanation why any documents will not be produced. We would prefer to not involve the Board in this matter by filing a motion to compel. We appreciate your cooperation and look forward to your prompt response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Scott J. Connolly', written in a cursive style.

Scott J. Connolly

cc: Thomas F. Dunn, Esq.  
Sheri S. Mason, Esq.



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August 13, 2013

**BY EMAIL**

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Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

**Re: Valeritas, Inc. v. VGo Communications, Inc.**  
**TTAB Cancellation No. 92054171**

Dear Counsel:

I write concerning your client's deficient document production. It was clear from the Rule 30(b)(6) deposition of Mr. Ryden that VGo Communications, Inc. ("VCI") has not produced the following relevant and discoverable documents:

- All documents concerning Mr. Geer and his role in the creation of the VCI mark at issue, including all emails between Mr. Geer and VCI employees, invoices, and documents concerning Mr. Geer's "work around the design and suggestions for logos and other print material." See Ryden Transcript at 20-32. These documents are responsive to Valeritas, Inc.'s Request No. 1. Further, VCI's production contains no internal VCI communications whatsoever concerning VCI's creation and adoption of the logo at issue. VCI's sweeping objections to this request are meritless. As such, we demand that VCI produce all email and other communications relating to VCI's creation and adoption of the logo at issue and its consideration of other logo designs.
- The list of VCI's hospital customers referenced by Mr. Ryden; all listings of potential healthcare customers purchased by VCI for direct mail or other marketing purposes (including the Telemarketing efforts described by Mr. Ryden); and all other documents including without limitation documents and reports from VCI's CRM that identify customers or potential customers of VCI in the healthcare market who diagnose, treat, educate or are in any other way interact with persons with diabetes. See Ryden Transcript at 47, 60-64 and 105-07. These documents are responsive to Valeritas, Inc.'s Requests Nos. 20, 21, 28, 29 and 35.
- All documents and communications concerning the healthcare "white paper" created by VCI, including all drafts and the final version. See Ryden Transcript at 108-10. These documents are responsive to Valeritas, Inc.'s Requests Nos. 20, 21, 28 and 29.

August 13, 2013

Page 2

- All documents and communications concerning business plans of VCI between 2007 and the present, including drafts and final versions of such plans. See Ryden Transcript at 114-16. These documents are responsive to Valeritas, Inc.'s Requests Nos. 20, 21, 28 and 29.

There is no basis for VCI to withhold the foregoing categories of documents from production. Please produce all such documents immediately, but in any event no later than 24 hours before Mr. Semonite's deposition next week. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott J. Connolly". The signature is written in a cursive style with a large initial "S".

Scott J. Connolly

cc: Thomas F. Dunn, Esq.  
Sheri S. Mason, Esq.

# **EXHIBIT 4**



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August 14, 2014

**VIA FED EX AND EMAIL**

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

**Re: Valeritas, Inc. v. VGO Communications, Inc.**  
**TTAB Cancellation No. 92054171**  
**Our Ref.: VALTM-ADV001**

Dear Mr. Bevilacqua:

We write regarding deficiencies in VGO Communications, Inc.'s ("VCI" or "Respondant") responses to Valeritas, Inc.'s ("Valertias" or "Petitioner") First and Second Set of Requests for Admissions, Interrogatories, and Production of Documents and Things in the above-referenced trademark opposition proceeding before the Trademark Trial and Appeal Board ("TTAB"). It is imperative that we resolve these deficiencies as soon as possible.

If VCI does not agree to remedy the deficiencies and provide supplemental responses to all requests promptly, Valeritas will have no choice but to file with the TTAB a motion to compel full and accurate responses. Accordingly, we request you remedy these deficiencies and provide supplemental evidence **within five (5) business days from the date of this letter**. The deficiencies in those responses are set forth below in some detail.

We served the First Set of Requests for Admissions, Interrogatories, and Production of Documents and Things on December 21, 2011 and the Second Set of Requests for Admissions, Interrogatories, and Production of Documents and Things on August 29, 2012. Thus, the responses were due on January 25, 2012 and October 4, 2012 respectively (30 days from the date of service plus five additional days because the requests were served by mail; *see* Trademark Trial and Appeal Board Manual of Procedure ("TBMP") §§ 113.05 and 403.03; 37 C.F.R. §§ 2.119(e) and 2.120(a)). We consented to a 30-day extension followed by a 14 day extension to respond to discovery requests for the first discovery requests. Thus, the responses to the first set were due on March 11, 2012. VCI's responses and certificates of service are dated March 8, 2012 for the first set of discovery requests and October 2, 2012 for the second set of discovery. However, the responses were deficient as discussed in more detail below.

Specific deficiencies in VCI's discovery responses include, but are not necessarily limited to, the following:

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### Interrogatories

**Interrogatory No. 1** requests that VCI state all facts concerning VCI's adoption of VCI's Mark, including, but not limited to (a) identifying all personal who were involved in the selection of the mark and state such person's role in the selection of the mark; (b) identifying the date or dates upon which the mark was selected; and (c) stating whether any trademark searches were conducted with the adoption of the mark, and if so, identifying the person(s) who conducted the search(es), whether or not such person(s) were attorneys, and identifying any search reports that were generated as a result of the search(es).

VCI's Mark is defined as "any mark allegedly owned by VCI that includes the word VGO in any form, including but not limited to the VGO mark as depicted in the following design:



for use on 'robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems.'"

VCI's prior response pertained to the standard character mark but not the VGO mark depicted in the above design (hereinafter "VCI's VGO Design Mark"). VCI must respond to this interrogatory concerning both the VCI's standard character mark (hereinafter "VCI's VGO Standard Character Mark") and VCI's VGO Design Mark.

On August 22, 2012, VCI responded by claiming this interrogatory is outside the scope of the proceeding because Valeritas petitioned to cancel VCI's Standard Character Mark. However, as we stated in our letter dated December 21, 2011, VCI's VGO Design Mark is within the scope of this proceeding because the logo design appears in VCI's Specimen of Use. It is appropriate for the TTAB to consider how the mark is actually used in commerce when evaluating competing marks for likelihood of confusion purposes. (See cases cited in attached letter, Exhibit A).

**Interrogatory No. 2** requests that VCI identify each and every good and/or service advertised, promoted, distributed, offered, and/or sold by VCI in the United States under or in connection with VCI's Mark, and for each such good or service, state: (a) The date of first use in commerce of VCI's Mark in connection with the identified good or service; (b) The sales by unit volume, by month and year, for each year since such sales began; (c) The gross revenue, by month and year, for each year since such sales began; (d) The approximate annual dollar amount expensed each year to date by VCI in advertising and promoting each identified good or service under VCI's Mark; and; (e) The approximate annual dollar amount VCI expects to be spent in advertising and promoting VCI's goods and/or services in connection with VCI's Mark for each

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year from 2012 through 2016. VCI initially objected to the Interrogatory on the grounds that the information that constitutes confidential or private business information.

VCI's response to this interrogatory is deficient in two ways. First, on August 22, 2012, VCI responded by providing the gross revenues for the years 2010 and 2011. VCI also provided its advertising and sales expenses for 2010 and 2011 (and projected expenses through 2015). VCI is required to supplement its response with information for the years 2012, 2013, and 2014. Second, VCI stated that it would provide documents and things responsive to Interrogatory 2(b) and (c) but has not produced these documents and things.

**Interrogatory No. 14** requests that VCI state all facts concerning how VCI's goods and/or services are marketed, promoted, offered, and/or sold to the medical and/or health care communities, describing whether and how VCI's goods are marketed, promoted, offered, and/or sold to doctors, hospitals, health insurers, and/or patients.

VCI's response on October 2, 2014 is deficient because it fails to state all facts, including but not limited to the trade shows it attended.

**Interrogatory No. 15** requests that VCI state all facts concerning VCI's relationship with companies in the field of treating, evaluating, diagnosing, and/or counseling patients with diabetes, including but not limited to PositiveID Corporation.

VCI objected by stating the term "relationship" is unclear and assumes the definition to be "ongoing business communication." The term relationship is not unclear, and encompasses all companies VCI has or had a business relationship with. VCI's response is deficient because it only addressed "ongoing" business relationships and not all companies it has or had a business connection with, including but not limited to the joint demonstration with PositiveID.

**Interrogatory No. 16** requests VCI state all facts concerning the joint demonstration with PositiveID Corporation's wireless communication device for diabetes management operating in conjunction with VCI's robotic telepresence.

VCI's response is deficient because it fails to state all facts, including but not limited how the demonstration was conducted or how PositiveID Corporation "invited" VCI to do the joint presentation. Further, it stated that the demonstration was "not in conjunction with PositiveID Corporation's wireless communication device," which is contradictory to the article found on VCI's website, which states "[t]he companies will demonstrate PositiveID's glucose *wireless communication device* for diabetes management operating in conjunction with Vgo's robotic telepresence..." (see **Exhibit B**)

**Interrogatory No. 17** requests VCI to state all facts concerning VCI's connection with ExL Pharmaceutical Conferences. VCI objected by stating the term "connection with" is unclear, and as such, states that it has "no connection" with ExL Pharmaceutical Conferences. VCI's response is deficient because it fails to state whether VCI has been a sponsor or had an exhibit at any of

August 14, 2014

Valeritas, Inc. v. VGO Communications, Inc.

ExL's conferences or has in any way been involved with or participated in ExL Pharmaceutical Conferences.

### Requests for Admissions

VCI's responses to Valeritas' first and second set of requests for admissions are also insufficient. Specific deficiencies in VCI's discovery responses include, but are not necessarily limited to, the following:

**Request for Admission No. 24** required VCI to admit that VCI collaborated with a company named PositiveID Corporation.

VCI responded by claiming "collaborated with" is unclear, and as such, denied this request. However, not only is the term "collaborated with" clear, an article on VCI's website discusses a demonstration with PositiveID Corporation (see Exhibit B).

**Request for Admission No. 25** required VCI to admit that VCI hosted a joint demonstration with PositiveID Corporation's wireless communication device for diabetes management operating in conjunction with VCI's robotic telepresence.

VCI responded by claiming "hosted a joint demonstration" is unclear and, as such, denied this request. However, in the article on VCI's website, not only does VCI discuss the demonstration with PositiveID Corporation, it uses the phrase "hosted a joint demonstration" in the title of the article (see Exhibit B).

### Requests for Production of Documents and Things

VCI's responses to Valeritas' first and second set of requests for production of documents and things are also insufficient. In the following cases, VCI failed to produce all documents requested.

**Request for Production No. 1** seeks production of documents and things concerning VCI's selection, adoption and creation of VCI's Mark. In its response on March 8, 2012, VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI must produce documents and things responsive to this Request for VCI's Mark, which includes VCI's VGO Design Mark.

On August 22, 2012, VCI responded by claiming this request is outside the scope of the proceeding because Valeritas petitioned to cancel VCI's Standard Character Mark. However, as we stated in our letter dated December 21, 2011, VCI's VGO Design Mark is within the scope of this proceeding because the logo design appears in VCI's Specimen of Use. Therefore, it is appropriate for the TTAB to consider how the mark is actually used in commerce when evaluating competing marks for likelihood of confusion purposes.

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Further, while VCI provided some documentation concerning the creation of the logo design and correspondence with Doug Geer, it failed to provide any other communication or documentation concerning the creation and selection of either the VGO Standard Character Mark or the VGO Design Mark.

**Request for Production No. 2** seeks production of documents and things concerning VCI's research regarding registrability and clearance of VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI produced documents and things for VCI's Mark in standard characters.

While VCI provided some documentation concerning the research regarding registrability and clearance of VCI's VGO Standard Character Mark, it failed to provide any documentation concerning the research regarding registrability and clearance of VCI's VGO Design Mark, or any communications related to the clearance of either VCI's VGO Standard Character Mark or the VCI's VGO Design Mark. Further, it failed to produce any correspondence or other documentation of research regarding the registrability and clearance for either VCI's VGO Standard Character Mark or the VCI's VGO Design Mark.

**Request for Production No. 3** seeks production of documents and things concerning any formal or informal trademark searches or investigations concerning VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI produced documents and things for VCI's Mark in standard characters.

While VCI provided some documentation of formal or informal trademark searches or investigation of the VGO Standard Character Mark, it failed to provide such documentation for VCI's VGO Design Mark. Further, it failed to produce any correspondence or other documentation concerning the trademark searches for either VCI's VGO Standard Character Mark or the VCI's VGO Design Mark.

**Request for Production No. 17** seeks production of documents and things concerning any advertisements VCI placed in any magazine or other publication in any format, whether print, online, or in any other format. In its response dated March 8, 2012, VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

Then, on August 22, 2014, VCI responded by objecting to the production as burdensome and oppressive. It produced representative samples of its advertisements. VCI's response is insufficient because it did not produce all documents and things (including advertisements on the radio and/or television), and more specifically, all advertisements related to healthcare.

**Request for Production No. 18** seeks production of documents and things concerning any news or feature stories about VCI and/or products sold under VCI's Mark that have appeared in any magazine or other publication in any format, whether print, online, or in any other format. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and

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things responsive to this Request. While VCI submitted some materials, the submission is insufficient. For example, VCI's product was featured in a Sports Illustrated article and while VCI produced the online version of the article, VCI failed to produce the printed version of the article, which may contain the VCI Design Mark. Further, VCI failed to produce any articles or press releases concerning its partnership with Positive ID Corporation. Finally, VCI failed to produce documents and things of any news or feature stories about VCI and/or products sold under the VCI Mark that have been covered by television and/or radio. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

On August 22, 2014, VCI responded by objecting to the production as burdensome and oppressive. It produced representative samples of its news and/or feature stories. VCI's response is insufficient because it did not comply with the request to produce all documents and things (including news and/or feature stories on the radio and/or television), and more specifically, all documents and things concerning any news or feature stories, which are related to healthcare.

**Request for Production No. 20** seeks production of documents and things concerning VCI's marketing plans for VCI's mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

On September 16, 2013, VCI provided its business plans for the years 2008 and 2011. VCI is required to supplement its response with information for the years 2012, 2013, and 2014, as well as provide any other documents and things concerning its marking plans.

**Request for Production No. 22** seeks production of documents and things concerning or identifying VCI's competitors in the marketplace. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

On August 22, 2014, VCI stated that it inadvertently omitted VGO 000664-670 from the production of documents. The document produced is an article entitled "The Boss is Robotic, and Rolling Up Behind You." While the article discusses robotic telepresence companies, it does not clearly identify VCI's competitors in the marketplace. As a result, VCI has still not complied with the Request for Production No. 22.

**Request for Production No. 24** seeks production of documents and things of the circumstances under which VCI first learned of Valeritas and/or Valeritas' Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

On August 22, 2012, VCI responds by stating Registrant first learned of Valeritas' Mark when it received the letter from our firm dated January 21, 2011. However, Valeritas' Mark appeared in the Thomson Research Report (VGO 000285 and VGO 000345-346), dated February 23, 2010. VCI's response is therefore deficient and it should supplement its production to comply with Request for Production No. 24.

August 14, 2014

Valeritas, Inc. v. VGO Communications, Inc.

**Request for Production No. 29** seeks production of documents and things describing the channels of trade for the distribution of VCI's goods and/or services under VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

On August 22, 2012, VCI produced articles and information located on its website. While these documents may reference VCI's channels of trade for the distribution of VCI's goods, it does not describe the channels of trade for the distribution of VCI's goods and/or services under VCI's Mark. VCI must produce documents and things responsive to this Request, including without limitation information concerning medical organizations, hospitals, clinics, healthcare professionals, and/or organizations and institutions in which VCI's goods and/or services are used in the course of diagnostic, treatment, and/or care.

**Request for Production No. 32** seeks production of documents and things concerning contracts or agreements with affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, doctors, wholesalers, and/or retailers through whom VCI markets and sells its goods and services under VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

On August 22, 2012, VCI responded that it "will provide documents they can find responsive to this request." We have not received any documents.

**Request for Production No. 37** seeks production of documents and things identifying each and every employee and/or agent of VCI's charged with responsibility for VCI's Mark and/or describing any such employee's or agent's duties with respect to VCI's Mark. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request.

VCI responds by stating that there is no such documentation. However, based on other discovery request responses, it is clear that Ned Semonite selected VCI's VGO Design Mark. Also, other discovery request responses demonstrate there were other employees involved in the selection of VCI's VGO Design Mark. Therefore, VCI is required to produce documents and things identifying these employees and/or agent that were involved in the process of selecting VCI's VGO Design Mark.

**Request for Production No. 46** seeks production of documents and things identified in VCI's Responses to Valeritas' Second Set of Interrogatories. VCI responds that it will produce non-privileged and otherwise non-objectionable documents and things responsive to this Request. VCI is obligated to produce all documents and things in its possession, custody, or control. VCI must produce documents and things responsive to this Request.

August 14, 2014

Valeritas, Inc. v. VGO Communications, Inc.

VCI has not produced documents identified in Valeritas' Second Set of Interrogatories for Interrogatory No. 9, Interrogatory No. 14, Interrogatory No. 15, Interrogatory No. 16, or Interrogatory 17.

We look forward to receipt of both your responses to resolve all deficiencies and your supplementation of discovery requests to resolve the deficiencies **within five (5) business days from the date of this letter.**

Sincerely,



Shori S. Mason

cc: Thomas F. Dunn, Esq.

# **EXHIBIT A**



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December 21, 2011

Via U.S. Mail

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

*Re: Valeritas, Inc. v. VGo Communications, Inc.  
TTAB Cancellation No. 92054171  
Our Ref.: VALTM-ADV001*

Dear Counsel:

Enclosed and served on you please find:

- Valeritas' First Set of Interrogatories to VGo Communications, Inc.;
- Valeritas' First Set of Requests for Production of Documents and Things to VGo Communications, Inc.; and
- Valeritas' First Set of Requests for Admissions to VGo Communications, Inc.

I also write to address the discussion we had during the parties' discovery conference. We were surprised that VGo Communications, Inc. ("VCI") took the position that the parties' respective marks are not similar when in fact, your client's typed drawing registration for the V-GO mark is identical to Valeritas, Inc.'s typed drawing application for the V-GO mark.

We also pointed out that the parties' respective logos are nearly identical. For ease of reference, the logos are reproduced below.



As you can see, both marks consist of a large capital letter "V" followed by the word "GO" in smaller caps. In addition, both marks contain a horizontal green line element with a spherical shape on the right-hand side, which suggests movement from left to right. During the discovery conference, you argued that VCI's mark as used in commerce is irrelevant to the analysis in

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
December 21, 2011  
Page 2

Trademark Trial and Appeal Board ("TTAB") proceedings when the applications and/or registrations at issue are for typed drawings.

We informed you that that is not the case. Rather, it is appropriate for the TTAB to consider how a mark is actually used in commerce when evaluating competing marks for likelihood of confusion purposes. We offered to provide you with some cases supporting this proposition of law, and you encouraged us to do so.

As Professor McCarthy explains, "As to format, if applicant's mark is shown in the application in typed letters, it is appropriate to compare actual specimens of applicant's use with opposer's format usage." J. Thomas McCarthy, 3 *McCarthy on Trademarks and Unfair Competition* § 20:15. The courts have followed this rule of law for at least 40 years. In *Phillips Petroleum Company v. C.J. Webb, Inc.*, 170 U.S.P.Q. 35 (C.C.P.A. 1971), Phillips opposed applicant's CRC MARINE FORMULA 6-66 mark based on an alleged likelihood of confusion with Phillips' 66 mark. *Id.* at 35.

Although applicant's mark in typed drawing form was significantly different than opposer's mark, the Federal Circuit's predecessor court examined the specimens of use submitted with the application. The court noted that because the application was submitted in typed capital letters, the "application is not limited to the mark depicted in any special form. In trying to visualize what other forms the mark might appear in, we are aided by the specimens submitted with Webb's application as illustrating the 'mark as actually used.'" *Id.* at 36. It was clear from the specimen that the "66" portion of applicant's mark was more prominent than the other portions of the mark. As a result, the court found a likelihood of confusion and reversed the TTAB's decision dismissing the opposition.

Moreover, the Federal Circuit has recently reinforced the validity of the *Phillips* case. See *Citigroup Inc. v. Capital City Bank Group, Inc.*, 98 U.S.P.Q.2d 1253, 1259 (Fed. Cir. 2011) ("As explained in *Phillips*, illustrations of the mark as actually used may assist the T.T.A.B. in visualizing other forms in which the mark might appear").

Accordingly, the uncanny resemblance of VCI's design mark to Valeritas' design mark further reinforces the conclusion that the marks are confusingly similar, and we thus continue to believe that the parties would be best served by VCI's adoption of a new mark that will not cause consumer confusion.

Sincerely,



Gregory M. Krakau  
Not admitted to the State Bar of Massachusetts  
Admitted to the State Bar of California

# **EXHIBIT B**



## Quick Links

Request Info  
Drive a VGo  
Latest VGo News  
Download VGo App

## PositiveID Corporation and VGo Communications Host Joint Demonstration of Wireless Health Solutions at ATA

TAMPA, FL – May 2, 2011 – PositiveID Corporation ("PositiveID") (NASDAQ: PSID), a leader in next-generation patient monitoring and diagnostics, and VGo Communications, Inc. ("VGo"), the leading provider of robotic telepresence solutions, announced today that the companies will host a joint demonstration of their innovative wireless health solutions working together at the American Telemedicine Association Annual International Meeting and Exhibition 2011 in Tampa, Florida. The companies will demonstrate PositiveID's iGlucose™ wireless communication device for diabetes management operating in conjunction with VGo's robotic telepresence to show the ability of wireless technology to transform healthcare through mobile interaction between patients and healthcare providers.

### Demonstration Details

Demos will take place twice daily on May 2 and 3 at 12:30 pm ET and 2:30 pm ET in PositiveID's booth (#1340). The live demonstration will show a student using iGlucose in a hypothetical classroom environment. Once the student checks her blood glucose readings, a text message will be sent via iGlucose to the "remote school nurse" (in Boston). The student's low blood sugar reading will prompt the nurse, using a VGo, to check on the student in Tampa. The VGo will travel from its booth (#1040) to booth #1340, all under the control of the nurse in Boston. The nurse will then have a short face-to-face conversation with the student and advise the student of actions to take to stabilize her blood sugar.

### About iGlucose

iGlucose uses the power of mobile technology to revolutionize the way individuals with diabetes manage their condition. iGlucose wirelessly communicates blood glucose readings from data-capable glucometers to the iGlucose database, where they can be shared with family members and health care professionals via email, text message or the database itself. For the 25.8 million Americans with diabetes, iGlucose can help revolutionize the way they manage their disease, while reducing costs and providing greater convenience and freedom.

### About VGo

Through VGo's robotic telepresence, an individual's presence is established in a distant location such that they can interact and perform their job in ways not previously possible. VGo allows an individual to see, hear, interact and move around in any remote site, just as if that person were there. VGo is not a videoconferencing/telepresence solution. With a videoconference, two or more people meet through TV monitors or PCs where people on both sides of the call must be sitting there in front the camera. With VGo, a person is completely independent of the people in the remote location. VGo's remote controlled mobility and physical presence makes it something totally new.

### About VGo Communications, Inc.

VGo Communications, Inc. develops and markets visual communications solutions for the workplace. VGo's experienced successful veterans of visual communications and robotics industries are leveraging the recent trends of widespread wireless high speed networks, lower specialized component costs and the universal acceptance of video as a communications medium to create a new market category called "Robotic Telepresence."

### About PositiveID Corporation

PositiveID Corporation develops and markets healthcare and information management products through its diagnostic devices and identification technologies, and its proprietary disease management tools. PositiveID's implantable healthcare devices and external hardware and software products are designed to communicate wirelessly to improve healthcare and the patient's quality of life. For more information on PositiveID, please visit [www.PositiveIDCorp.com](http://www.PositiveIDCorp.com).

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Pin It

**Contact Us**

VGo Communications, Inc.  
100 Innovative Way, Suite 3321  
Nashua, NH 03062  
Phone: 803-880-8040  
Fax: 803-860-9040  
[Contact Us](#)

**Tweets**

[Follow](#)



**VGo Communications** 5h

[@vgocon](#)

Donation gives Education Service Center Region 2 a third robot to help home bound children

VIDEO: [ow.ly/rj8dH](#)

[Show Media](#)



**VGo Communications** 13 Aug

Tweet to [@vgocon](#)

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[Privacy Policy](#) [Contact Us](#)

## **Sheri S. Mason**

---

**From:** Barakat, Barbara <Barbara.Barakat@wilmerhale.com>  
**Sent:** Wednesday, August 27, 2014 11:13 AM  
**To:** Sheri S. Mason  
**Cc:** Bevilacqua, Michael; Hobgood, John  
**Subject:** Valeritas, Inc. v. VGo Communications, Inc.

Dear Sheri,

Thank you for your letter dated August 14, 2014, which arrived in our offices by email and FedEx on August 18, 2014. Please see our comments below.

### Interrogatories

No. 1: Please see Registrant's Response to Interrogatory No. 13, served October 2, 2012.

No. 2: We have requested updated information regarding gross revenues and advertising and sales expenses for 2012, 2013 and 2014 from our client and will forward it as soon as it is received. We have also requested unit volume, by year, for each year since sales began. Respondent objects to the request for monthly unit volume as excessive and burdensome, not reasonably related to the subject matter of this action and not reasonably calculated to lead to admissible evidence.

No. 14: Please see Registrant's Response to Interrogatory No. 6, listing trade shows attended.

No. 15: In our view, a business relationship requires an agreement and we are checking with our client as to whether it had an agreement with any companies in the field of treating, evaluation, diagnosing and/or counseling patients with diabetes, including but not limited to PositiveID Corporation.

No. 16: We are checking with our client to determine if other information is available to respond to your questions.

No. 17: We are checking with our client if it has been a sponsor or had an exhibit at any of ExL's conferences or has been involved with or participated in ExL Pharmaceutical Conferences.

### Requests for Admissions

No. 24: VCI denied that it "collaborated" with a company named "PositiveID Corporation," and we maintain that this response is not deficient. The press release itself states how the demonstration was to be conducted. As noted above, we are checking with our client to determine if there is other information available to respond to your questions regarding the demonstration.

No. 25: When we have all the information from our client to respond to Interrogatory No. 16, we will determine if the response to this Request for Admission should be amended.

### Requests for Production of Documents and Things

No. 1: Please see Registrant's Response to Interrogatory No. 13, served October 2, 2012 and, for example, VGO 000177 – 000283 and 000679-000750.

No. 2: There are no documents responsive to this Request for Production, as there were no formal searches done for the design mark.

No. 3: We are checking with our client to ensure that VCI has provided all documents and things concerning formal and informal trademark searches or investigations concerning VCI's Design Mark.

No. 17: VCI has met its burden for response by providing sample representative advertisements. We are checking with our client to determine if there are any print advertisements, or any radio or television advertisements related to healthcare.

No. 18: VCI has met its burden for response by providing sample representative news or feature stories about VCI and/or products sold under the VCI Mark. VCI does not have a copy of the printed version of the Sports Illustrated article mentioned in your letter. VCI has produced all documents and things in its possession, custody or control and objects to this request as excessive and burdensome, not reasonably related to the subject matter of this action and not reasonably calculated to lead to admissible evidence.

No. 20: We are checking with our client to determine if it has updated business plans for the years 2012 – 2014.

No. 22: We are checking with our client to determine if it has any documentation concerning competitors in the marketplace.

No. 24: By providing copies of all the relevant searches, VCI has responded completely to this Request.

No. 29: We are checking with our client to determine whether it has any documents that describe its channels of trade.

No. 32 We are checking with our client to determine if there are any documents concerning contracts or agreements with affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, doctors, wholesalers, and/or retailers through whom VCI markets and sells its goods and services under VCI's Mark.

No. 37: Again, we are checking with our client to determine if there are any documents concerning the selection and adoption of VCI's Design Mark.

No. 46 This request seeks "all documents and things identified in VCI's responses to Valeritas' Second Set of Interrogatories." Valeritas' Second Set of Interrogatories starts with Interrogatory No. 13. Please let us know the specific responses for which you are seeking documents.

If you have any questions, do not hesitate to contact us.

Barbara

**Barbara A. Barakat | WilmerHale**  
60 State Street  
Boston, MA 02109 USA  
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+1 617 526 5000 (f)  
barbara.barakat@wilmerhale.com

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September 10, 2014

**Barbara A. Barakat**

**By Email**

**Confirmation copy by First Class Mail**

+1 617 526 6154(t)

+1 617 526 5000(f)

barbara.barakat@wilmerhale.com

Sheri S. Mason, Esq.  
Morse Barnes-Brown Pendleton PC  
CityPoint  
230 Third Avenue, 4th Floor  
Waltham, Massachusetts 02451

Re: Valeritas. Inc. v. VGO Communications, Inc.  
TTAB Cancellation No. 92054171

Dear Sheri:

In response to your letter dated August 14, 2012 and further to our email of August 27, 2014, enclosed with the confirmation copy of this letter are VGO's Third Amended Response to Valeritas' First Set of Interrogatories and VGO's Second Amended Response to Valeritas' Second Set of Interrogatories. Please note that the Third Amended Response is marked "CONFIDENTIAL – ATTORNEYS EYES ONLY."

Also enclosed with the confirmation copy of this letter are Registrant's Documents No. VGO 001280 - 001508.

If there are any other questions, do not hesitate to contact us.

Very truly yours,



Barbara A. Barakat

Enclosures (w/ confirmation copy)

cc: Thomas F. Dunn, Esq. (w/o enclosures)  
Michael J. Bevilacqua, Esq. (w/o enclosures)

# **EXHIBIT 5**

# **EXHIBIT 5**

# UNITED STATES DISTRICT COURT

for the

District of Massachusetts

Valeritas, Inc. )  
*Plaintiff / Petitioner* )  
 v. )  
VGo Communications, Inc. )  
*Defendant / Respondent* )

Civil Action No. / Cancellation No. 92054171

(If the action is pending in another district, state where:  
U.S. Patent & Trademark Trial and Appeal Board )

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Keeper of the Records, PositiveID Corporation  
1690 South Congress Avenue, Delray Beach, Florida 33445

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Any and all documents in your possession, custody, or control evidencing communications between PositiveID Corp. and Vgo Communications, Inc., or relating to Vgo Communications, including but not limited to documents concerning the joint demonstration conducted by PositiveID and Vgo on May 2-3, 2011 at the American Telemedicine Association Conference.

Place: United Reporting 5550 Glades Road, Suite 500 Boca Raton, Florida 33431	Date and Time:  08/27/2014 10:00 am
---	---

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/13/2014

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) Valeritas, Inc., who issues or requests this subpoena, are:

Sheri S. Mason, Esq., at Morse, Barnes-Brown & Pendleton, P.C., City Point, 230 Third Ave., 4th Floor, Waltham, MA 02451; Telephone: (781)622-5930; Email: smason@mabbp.com



August 26, 2014

Ms. Sheri S. Mason, Esq.  
Morse, Barnes-Brown & Pendleton, P.C.  
City Point  
230 Third Ave., 4<sup>th</sup> Floor  
Waltham, MA 02451

**Re: Valeritas v. VGo Subpeona**

Dear Ms. Mason:

We received the subpoena related to the case referenced above, a copy of which is attached. We have completed our review and will be delivering all documents as directed in the subpoena on August 27, 2014.

The PositiveID iglucose product line, which was part of our diabetes management business, was discontinued over two years ago. The one person on our staff who oversaw that product was Mary Ellen Harrison. We retained her laptop when she was terminated in 2012. What we found in our document search were emails and other stored documents that referred to or mentioned VGo. We have printed all of those documents and are submitting to you both groups: (1) the emails, and (2) the printed documents from Word, etc.

Should you have any questions, please contact Stephanie Posada at 561/805-8027.

Very truly yours,

A handwritten signature in black ink, appearing to read "WJ Caragol", written over a horizontal line.

William J. Caragol  
Chief Executive Officer

---

**From:** Mary Ellen Harrison  
**Sent:** Tuesday, August 31, 2010 5:45 PM  
**To:** Keith Braude  
**Subject:** RE: More than 500 Best Buys to stock mHealth; Jitterbug; Epilepsy monitoring

Keith,

Thanks. I spoke with Kurt and they are adding glucometers in January!!!! So very good timing. I am putting together info to see if we can be considered.

Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Keith Braude  
**Sent:** Thursday, August 26, 2010 12:20 PM  
**To:** Mary Ellen Harrison  
**Subject:** FW: More than 500 Best Buys to stock mHealth; Jitterbug; Epilepsy monitoring

2<sup>nd</sup> article represents Best Buy...



NationalCreditReport.com™

Keith Braude  
VP Sales & Business Development  
PositiveID Corporation [www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)  
Office 561.805.8041 Cell 847.630.5192

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**From:** keith braude [mailto:[keithbraude@gmail.com](mailto:keithbraude@gmail.com)]  
**Sent:** Thursday, August 26, 2010 11:29 AM  
**To:** Keith Braude  
**Subject:** More than 500 Best Buys to stock mHealth; Jitterbug; Epilepsy monitoring

----- Forwarded message -----

From: **MobiHealthNews** <[news@mobihealthnews.com](mailto:news@mobihealthnews.com)>

Date: Thu, Aug 26, 2010 at 8:51 AM

Subject: More than 500 Best Buys to stock mHealth; Jitterbug; Epilepsy monitoring

To: [keithbraude@gmail.com](mailto:keithbraude@gmail.com)

[View this email as a webpage](#)



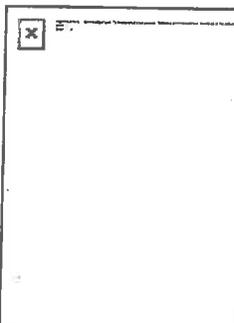
**August 26, 2010 Edition**



## **Wave's mobile monitoring to manage epilepsy**

By [Brian Dolan](#)

In the United States today there are about 3 million people with some form of epilepsy, a medical condition that produces seizures affecting mental and physical functions. When a person has two or more unprovoked seizures they are generally considered to have epilepsy, according to the Epilepsy Foundation, which estimates direct and indirect costs associated with the condition at about \$15.5 billion in the US each year.



### **Top Headlines**

[Wave's mobile monitoring to manage epilepsy](#)

[Best Buy: 500 stores to get mHealth devices](#)

[Jitterbug's reminders, Rx refills, check-in calls](#)

[SMS reminders don't work for birth control](#)

[MetroWest Medical's ER SMS and much more](#)

[Analyst: Heart monitoring now, DM tools later](#)

[Android, iPad, iPhone medical apps round-up](#)

["Faddy" wellness apps and more mHealth news](#)

"Ten percent of epilepsy patients have a severe case. That means about 300,000 people in the US have severe cases with some of them continuously having seizures. They need 7-by-24 monitoring," Sam Cinquegrani, Founder, President and CEO of Wave Technology Group told MobiHealthNews in a recent interview. "Severity is often worse for children than adults. And no one seems to know why."

Cinquegrani and his team at Wave hope to help researchers unlock some of the mysteries behind epilepsy while also helping patients and caregivers manage seizures.

Wave's technology aims to allow users to live normal lives thanks to real-time EEG monitoring, smartphones, GPS location monitoring and other monitoring tools the company co-developed with its partners at the University of Chicago Epilepsy Center. Wave's system may notify the patient or a caregiver about the current condition and could alert emergency personnel if a seizure is detected.

"Unfortunately, there are only about 100 epilepsy centers in the country," Cinquegrani said. "Each has maybe a dozen or so beds, so best case: About 1,000 patients with epilepsy can be monitored concurrently." That's 1,000 out of 300,000 people with severe cases of epilepsy, or about 1,000 out of the total 3 million Americans living with epilepsy.

"If we could get 20,000 users on our monitoring system, we could deliver our monitoring service for about \$1,500 a year," Cinquegrani said. "The cost of one night stay at the hospital is typically a few thousand dollars."

Cinquegrani said Wave plans to sell its application as a service and charge an annual subscriber fee so users don't have to worry about devices breaking down. Wave expects to handle the monitoring, too.

"Our technology could serve so many more than can be served today with 100 centers," Cinquegrani said. "This technology can lower the cost of providing healthcare to these patients at a [price point] that is unheard of — that is our goal."

Cinquegrani believes that research into epilepsy will be greatly advanced if a larger number of patients could be monitored concurrently while being able to go about their daily lives.

"Today we cannot detect when a seizure is about to occur," he said. "Our goal is to get to the point where we could tell a driver to stop and pull over. Right now everything we can do is just a reaction after it happens, but we can react quicker. Seizures can be fatal, especially for children."

Cinquegrani expects his team's device to begin field tests and the 510(k) FDA approval process in the next six to twelve months. The device is very much a mobile one: All of the intelligence for Wave's device will be running from the user's smartphone. What's more, Wave expects the finished device to be "two-thirds the size of a business card."

"The idea is: Make it so small that a kid could wear it under a baseball cap," Cinquegrani said.

 [Comment](#)  [Forward to Friend](#)

x

## Events

### **2nd mHealth Networking Conference** September 8-9, San Diego CA

Come to San Diego to learn all about mHealth. Network and get first-hand information. Have fun at the social events. Attending the event includes appointment options with presenting vendors during the event

[Click here](#) for more info

### **mHealth Conference & Expo** September 14-15, Dubai, UAE

Experience the first ever truly global mHealth conference!

mHealth 2010 brings together leading players from across the entire mobile healthcare ecosystem. It will feature 35+ top executive presentations and global case studies. The conference will facilitate the global development of mobile healthcare and explore ways in which universal healthcare can be delivered with the aid of mobile technology. With over 200 attendees, global case studies, key decision makers, innovative formats and built-in networking time, this is a conference that you cannot afford to miss.

### **More about mHealth 2010**

**Second Annual Medical Innovation and Strategies Conference: Consumer Healthcare & Wireless Technologies**  
September 15, 2010, Durham,

x

## North Carolina – Duke University, Fuqua School of Business

**Overview:** A gathering of over 140 academics, entrepreneurs, investment bankers and senior industry leaders from across the relevant fields of wireless and consumer healthcare and healthcare delivery. Conference includes keynote presentations, panel discussions represented by senior executives and networking opportunities.

### Key areas of focus:

- >Future impact of wireless technology on healthcare industry
- >Understanding the future trends of consumer healthcare
- >Expert panel discussions on business models and innovation solutions

[Click here for additional program details](#)

## 2nd Annual International Mobile Healthcare Industry Summit September 21-22, London, UK

In 2009 we were delighted to host Vittorio Collao, Group Vodafone CEO, as the opening keynote of the event.

In 2010 we continue the tone of global excellence and inspiration in mobile healthcare with over 60 executive speakers and driving forces in wireless healthcare enablement and sports wellness innovation. Case studies will include those from, France Telecom, Telefonica, NHS Choices, Mayo Clinic, Harley Street Clinicians, Monica Healthcare, Royal National Institute of the Blind, New Economic Partnership for Africa's Development and the newly announced European Mobile Health Alliance.

The event is collaborative between the wireless and health/fitness sectors and therefore largely panel lead this year to encourage real fruitful cross-sector discussion. Expect multiple panel discussions, keynote 1:1 interviews, granular healthcare provider case studies, a regional round up of global mobile healthcare, a lightning strikes presentation and awards showcasing

## Best Buy: 500 stores to get mHealth devices

By [Brian Dolan](#)

After a few months of testing, a Best Buy senior director, Kurt Hulander, said the big box electronics store will begin selling wireless-enabled health and fitness devices in more than half of its 1,089 stores in the US.

"It's a potential growth area for us," Hulander told BusinessWeek. "A lot of things traditionally done in the doctor's office might soon be done at home."

Best Buy has not finalized its product lineup yet but according to the BusinessWeek report it may include blood-pressure monitors, pedometers, and fitness watches. Hulander also plugged the potential for these devices to wirelessly transmit data to websites like Microsoft's HealthVault so they could be shared with medical professionals.

HealthVault is where much of Best Buy's recent interest in wireless health began:

At the [Microsoft Connected Health Conference last June](#), Best Buy teamed up with Microsoft's HealthVault team to invite device makers to pitch the electronics store's executives in a private meeting at the event: "If you believe that your product or solution can wow health-conscious shoppers at the largest consumer electronics retailer in the United States, this is your chance to make it happen," stated the Microsoft-Best Buy invitation for "HealthVaultDevices@BestBuy". The invitation also explained that "outstanding solutions providers" would have the opportunity to discuss collaboration opportunities with Best Buy. Qualifications for the device companies included the ability to "demonstrate how health data can be transferred from their device, via a wired or wireless connection, to a PC, phone or directly to the cloud." HealthVault integration was considered a "plus" but not a requirement.

Since then New Jersey medical group Meridian Health [announced \(at MobiHealthNews' Everywhere Healthcare event\)](#) last year that it was working with Best Buy to determine whether shoppers would

be interested in purchasing wireless-enabled devices at the company's stores: [Continue >>](#)

[Comment](#)  [Forward to Friend](#)

*"But for now, the most widely used health apps are 'faddy' wellness apps."*

**- Lisa Ellis, Principal, McKinsey & Co.**

## **Jitterbug's reminders, Rx refills, check-in calls**

By [Brian Dolan](#)

GreatCall, which offers the easy-to-use Jitterbug mobile phone service has added two more mobile health offerings to its Services Store: Medication Reminder and Check in Call.

Jitterbug subscribers who sign up for the new \$10-a-month medication reminder service will receive an automated phone call that reminds them to take a particular medication at a given time. The automated call isn't just one-way, however, it also asks users whether they took the medication and will record and track the user's compliance. Users can log-in to their Jitterbug account online to see a chart of their medication compliance or they can call Jitterbug's customer service department and have a printed out copy snail-mailed to them.

Medication Reminder enables users to "follow their medication schedule as prescribed by their doctor, track adherence to that schedule, and get prescription refill reminders—all from their easy-to-use Jitterbug J phone," according to the company. The service joins Jitterbug's other mobile health offerings: LiveNurse, Heart Healthy Tips, and Wellness Calls. A mobile personal emergency response (MPERS) service, called 5Star Emergency, which bulds on GreatCall's acquisition of MobiWatch last year, is expected to launch this fall.

GreatCall first piloted the Medication Reminder service with New Jersey-based healthcare provider Meridian Health during a six month period. In the pilot users self-report compliance rates between 63 percent and 90 percent when using the service. The reason most users in the pilot did not comply with their medication regimen? "Not needed."

Medication Reminder can remind users to to take up to 16 different medications. The reminder system will call the customer when it is time to refill their prescription, according to GreatCall. It can also

new start ups, the inaugural University (mobile healthcare) Challenge with R&D demonstrations and papers, and much more.

**[Click here for more info](#)**

## **USC's Fourth Annual Body Computing Conference Sep 24, 2010 Town and Gown - Los Angeles, CA**

The USC Center for Body Computing is a leader in the brave new world of connected healthcare, in which medicine, engineering, communications, and entertainment are synthesized into a new paradigm.

The USC Center for Body Computing will initially focus on:

> Expanding preventative healthcare by working with physicians to promote and develop a new fusion of personal health statistics, entertainment, and game design to create more health-conscious consumers

> Working with designers and medical device companies to make the storage and presentation of patients' physiological data relevant, useful, and independently monitored by a newly educated generation of consumers

> Strengthening the physician-patient rapport: transitioning healthcare away from a teacher-pupil relationship to genuine partnerships between physicians and patients as patients gain access to new technologies that educate them on their own health statistics

**[Click here for more about USC's Body Computing Conference](#)**

## **MobileHealth 2010 Sep 28 - 29, Philadelphia, PA**

Co-located at the **e-Patient Connections Conference** this event will focus on mobile solutions for patients and health consumers. Featured presenters include the CEO's of Zeo, Text4Baby, Vitality Glowcaps, Swith2Health, Contagion, HEALTHeME, Smarty Ears, with insights from Dr. Vic Strecher and Intel Digital Health's Dr. Margaret Morris. All 400 attendees will receive a free Zeo Sleep Coach and get hands-on access to the latest technology in Innovation Island.

connect users to their pharmacy to order the refill.

Jitterbug also launched a new \$5-a-month Check in Call service that sends users automated calls and gives them the option to send out a note to their list of contacts if they need help. The service aims to provide a "sense of security" and "peace of mind."

For more read the [Jitterbug press release](#)

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## **SMS reminders don't work for birth control**

By [Brian Dolan](#)

That is, at least, according to a new study published in *Obstetrics & Gynecology*: Daily text message reminders did not help the 82 women in the study become more adherent to their birth control pill regimen. Both the text-receiving participants and the control group missed about 5 pills per month. (Worth noting perhaps that, according to a report in the *Wall Street Journal* about the study, none of the women got pregnant during the three-month study.)

The study tracked adherence based on when a pillbox was opened — not self reports. The patients in the study, however, were aware that their pill boxes had the tracking device installed. In the control group women were encouraged to use their own tricks to remember to take their pill, and these included taking it at the same time as a vitamin or using their mobile phone alarm. About 68 percent in the group used their own reminder system, which may account for why both groups showed similar rates of adherence, according to the study's author who works at Boston University School of Medicine.

We have reported on a number of studies where text message reminders did have an effect on medication adherence: Last year, a study [published in the journal Pediatrics](#) concluded that text message reminders increased adherence to medication regimens among new liver transplant patients at Mt. Sinai Medical Center. More importantly: It led to better outcomes.

Leap of Faith Technologies has studied [whether text messages preloaded](#) on patients' mobile phones are more effective than those sent over wireless networks (they work on no-mobile-phone-zones like airplanes, after all.)

The new study on text message reminders and birth control regimens serves as yet another reminder that mobile technology is not a panacea for healthcare. As former Novartis CEO Dan Vasella [said last year](#): "These solutions are all fine and good, but I do not believe these technical approaches will solve the equation. People are not just machines. People are human beings with social, biological and psychological aspects that need to be addressed" if these solutions are to be effective.

To Vasella's point, there are a number of companies leveraging

**Save \$300 on your registration with PROMO CODE: mhn300**

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## **Second Annual Medical Device Connectivity Conference & Exhibition September 28-29, 2010, San Diego, CA**

The only event devoted to the topic of medical device connectivity, the conference draws a unique combination of attendees from both healthcare providers and manufacturers. The resulting mix provides a chance to gain insight into end user requirements, new technologies and product plans.

This year's conference will offer a unique opportunity to get immersed into every aspect of connectivity, workflow automation and enabling technologies. Like last year, you will find an outstanding agenda with early adopters and innovators in medical device connectivity.

[Click here for more](#)

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## **Health 2.0 October 7 - 8, San Francisco**

Through nearly a hundred speakers and plenty of new healthcare demos and technologies on display on stage and in the exhibit hall, you'll get a sweeping overview of the ways that information technology and the web are changing healthcare. We'll be looking at the "traditional" Health 2.0 areas like vertical search, online social networks, and tools for consumers. But the conference will also be focusing on the emergence of the data utility layer—exemplified by Microsoft HealthVault and Google Health, and will be examining the impact of the huge growth of social media outside of health care on Health 2.0.

[Click here for more](#)

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## **2010 Connected Health Symposium October 21 - 22, Boston, MA**

Partners HealthCare's Center for

mobile beyond the text message in the medication adherence realm. A much wider spectrum for wireless-enabled medication adherence services already exists: Proteus Biomedical might be at one end, while GlowCaps is at the other. Vitality's GlowCaps recently demonstrated 98 percent adherence in a study conducted at Partners Health Care in Boston.

Read more about the birth control adherence study over at the WSJ Health Blog

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## **MetroWest Medical's ER SMS and much more**

By [Brian Dolan](#)

**Boston hospital launches SMS ER wait times:** Boston's MetroWest Medical Center launched a texting program last week that enables people to find out emergency room wait times. In the week since it launched 450 people have texted in, according to the report. Users need to text 63311 to 437-411 to get the wait times. That's "Med11" to "4ER411" [Boston Globe](#)

**Telecom Analyst: Time to splash around is now:** Jeff Kagan is one of the biggest names among wireless and telecom industry analysts. Interesting to read his thoughts on wireless + healthcare, here's his conclusion: "I am in the wireless and telecom business, not healthcare. However, it is very interesting how these two previously unrelated fields are now overlapping. This is just the beginning. No one wants to be left behind when the wave of change passes. That means now is the time to jump in and splash around, before the real heat of competition begins." [E-Commerce News](#)

**Smartphones + EMRs + New Security Measures = Some unhappy MDs:** George Hickman, EVP and CIO at Albany Medical Center surveyed his colleagues at College of Healthcare Information Management Executives (CHIME) on smartphone use and found that 18 of the 52 hospitals that responded to his informal survey said they allowed smartphones to access the hospitals' EMRs or other clinical tools. Even those facilities that support smartphones have their limits. The survey found security was a key challenge and those hospitals that are already smartphone-friendly often lock down "idle" phones and require users to enter a password to begin using them again. These policies sometimes turn doctors off to using their smartphones at work, according to the report over at [American Medical News](#). AMedNews has more on smartphone adoption among physicians with quotes from many of the usual suspects, including Spyglass, Manhattan and more. [AMedNews](#)

**Connectivity + Scalability = Wireless health's big challenge:** A new survey and report conducted by Greystone Associates concluded that "integrating the flow of patient information on a facility-wide basis has been viewed as a critical first step in the evolution of patient care in the digital world" and "integration beyond the wired hospital LAN via wirelessly enabled devices is the

Connected Health 7th Annual Symposium: *The Way Forward: Reform's New Focus on Health and Wellness, Independent Aging, Chronic Condition Self-Care and the Tools That Support Them*

[Click here for more](#)

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**iHT2 Fall Health IT Summit**  
Nov 3 - 4, 2010  
Beverly Hills, CA

The Fall Health IT Summit is designed to help top-level executives, legislators, physicians, regulators, and technologists come to grips with the swirling forces of health information technology change, policy development and changing business models. The Summit provides an intimate, high level forum that facilitates open avenues of communication amongst executives and stakeholders in healthcare fostering the growth and adoption of HIT resulting in safer, more efficient healthcare.

[Click here](#) for more info

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**mHealth Summit**  
Nov 8 - 10, 2010  
Washington, DC

**One event where research, technology and policy come together to shape the future of mHealth**

The 2010 mHealth Summit is bringing together leaders from diverse stakeholder groups to strengthen health delivery all the way to the farthest reaches of wireless networks.

>Promoting cross-sector mHealth discussion and collaboration among experts from academic, government, business, development, health, policy, scientific and technology communities.

>Exploring the critical challenges and opportunities in sustainably scaling the deployment of mobile services and technologies for wellness, medical research, diagnosis, patient care, and health system strengthening in the developed and developing worlds.

>Finding the health and economic value chains in mHealth. Focusing

next frontier." The main challenge according to Greystone? Wireless devices "must overcome lingering connectivity and network scalability issues." Read more of the (very high level / scant on specific findings) press release here: [Press Release](#)

**RTLS + YouTube + Musically Gifted HCPS = Big RTLS Music Video Contest:** Awarepoint just launched the Big RTLS Music Video Contest: Open to all hospital staff in the US. Create a music video based on experiences related to the challenge of locating medical equipment... Awarepoint's contest was partially inspired by the company's theme song endeavor, which parodies the Stone's Can't Get No Satisfaction ([MP3 available here](#)) The music video contest includes cash prizes and the like. More here: [Press Release](#)

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## **Analyst: Heart monitoring now, DM tools later**

By [Brian Doian](#)

Jupiter Research analyst Anthony Cox divides wireless remote monitoring into two discrete buckets: Fundamental heart monitoring and on-going management of chronic diseases. While Jupiter's current and near-term forecast for these two categories favors the CardioNets, LifeWatches and eCardios of the world, Cox believes that longterm the larger user base and bigger revenues will come from managing chronic conditions.

"Particularly in the area of chronic disease management, the companies involved are still at the start-up stage. Most are still venture-backed to the tune of under \$10 million. That said, five years from now, remote monitoring of chronic diseases such as diabetes and COPD could be offering health insurance companies genuine cost savings, not only by notifying physicians on changes to patients readings such as glucose levels, but also by notifying the patients themselves of how they could (and should) change their behavior," Cox writes over at Connected Planet.

On the Jupiter Research corporate blog Cox makes a similar but more succinct comment: "Asthma, COPD and diabetes, could eventually represent a much larger market in terms of numbers of monitored individuals and even revenues." Dr. Eric Topol and others at the West Wireless Health Institute may agree: The WWHI's Top Ten Targets for wireless health show each of these three conditions have many more potential users than hear failure patients alone ([more here](#)).

Cox is also quick to point out that CardioNet and similar heart monitoring companies in North America will make up the "bulk" of the global remote patient monitoring market's estimated \$1.9 billion in 2014 because of the companies' ability to "charge significant amounts" for such services. (Wonder if CardioNet would agree that they [have the ability to charge significant amounts?](#))

Cox explains that the charging model for on-going chronic disease

future development and research.

[Click here](#) for more info

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## **Resource Center**

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### **Six Things Hospitals Need to Know About Replacing Pagers With Smartphones**

Many doctors, nurses, and administrators now request all communications – including code calls – to be sent to their smartphones. They wish to shed their tool belt of onsite and wide-area pagers and cell phones, preferring to simplify their lives and communications with a single, all-encompassing device. [Click here to download this free white paper \(pdf\)](#)

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### **Smart Hospitals: Embracing Smartphones at the Point of Care**

Compared to today's medical breakthroughs, hospital communication systems fail to keep pace. Outdated paging systems and multiple communications device cause confusion and reduce efficiency in hospitals. Smartphones offer a solution to many of today's healthcare communication issues. With PC-like functionality and advanced capabilities, smartphones provide a single interface to make calls, send texts, manage schedules, organize tasks, view online literature, and... [Click here to download this free white paper \(pdf\)](#)

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### **mHealth's Enabling Role in Healthcare Reform**

m-Health (mobile telehealth) solutions can help improve the present healthcare system and enable the legislative initiatives currently under way, including the National Broadband Plan, the HITECH Act and the Beacon Community Grants. Furthermore, m-Health can address many of the

management services is different and depends on a few factors, including "the scale of the project, the extent to which there is government funding and its perceived cost benefit in the long run." Cox also predicts that the first companies to convince payers about their services' "genuine cost savings" could see rapid uptake — mostly if their estimates prove to be true.

Read more from Cox over at [Connected Planet](#) and the [Jupiter Research blog](#)

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## Android, iPad, iPhone medical apps round-up

By [Brian Dolan](#)

**PerfectServe Clinician for the iPhone:** For those physicians with iPhones and an existing PerfectServe account (the company counts 14,000 customers), the new iPhone app from PerfectServe enables users to contact colleagues directly without needing phone lists, directories or call schedules; Call patients with their privacy protected, since only the physicians' office IDs will appear on caller ID; Change on-call schedules that will go into effect immediately; and more. [Press Release](#)

**Insulin dosing guidelines app for physicians:** Novo Nordisk launched NovoDose, an iPhone app that offers physicians an insulin dosing guide to look up dosing guidelines and blood glucose goals for their patients with diabetes. [Press Release](#)

**Three apps from Clairvia:** ShiftAlert Mobile, Physician Scheduler MobileConnect, and Care Value Management. The first alerts HCPs to open shifts that need to be filled. The scheduler keeps physicians informed of scheduling issues. More here: [Press Release](#)

**PhotoBooks-powered hospital app:** Texas-based Scott and White Healthcare released an iPhone app for patients that includes a symptom checker, provider locator, Rx refills, appointment scheduler and more. The app was created by PhotoBooks — here's their standard app offering for hospitals and medical groups: [PhotoBooks](#)

**DrChrono.com has updated its iPad EMR app to include e-prescribing:** The DrChrono.com eRx module includes a modifiable active medication list that includes the specific prescription information for all current medications for a given patient... [as well as an] active medication allergy list, and a warning system that alerts users if a prescription poses an allergy risk, or for example, if it is incompatible with an existing medication." [Press Release](#)

**Walking tour of London's medical history:** London's Wellcome Collection has partnered with City Stories Walks to create an iPhone application "walking tour" of London called Blood, Guts, Brains and Babies. It's a tour of the city's medical history: "The walk, written by Richard Barnett, author of Medical London, examines the

challenges that healthcare innovators collectively face in getting their health IT solutions deployed... [Click here to download this free white paper](#) (pdf)

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## Special Edition: iPad in Healthcare

Every 2.3 seconds Apple sells another iPad. The company has sold 3 million iPads in the last 80 days. iPads, a device form factor that by many accounts has never really existed before, has created a new market for mobile computing. The iPad is just a new beginning for tablet computing in healthcare. It's not the be-all-end-all. [Click here to read this special issue covering iPad's opportunity in healthcare.](#)

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## Special Edition: 9 Mobile Health Hospitals

The nine mobile health hospitals detailed in this special edition have lent a hand to wireless health startups across the spectrum of devices and services, including text message reminders, wireless peel-and-stick vital sign monitoring, wireless implantable devices and much, much more. These are nine care providers worth recognizing as their support for and publicity of mobile health helps many more than the startups and vendor partners they worked with directly. Their willingness to share their interest in mobile health raises all boats. [Click here to read this MobiHealthNews Special Edition](#)

fascinating history of medicine in and around the Bloomsbury district of central London, revealing common illnesses and cures, together with many gory, but fascinating details." [More](#)

**Android camera-enabled Instant Heart Rate:** A new Google Android app called Instant Heart Rate claims to use the Android-powered phone's built-in camera to measure a user's heart rate. [Video here.](#)

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## **"Faddy" wellness apps and more mHealth news**

By [Brian Dolan](#)

**Sorry, the iPhone isn't revolutionizing medicine... yet:** A Business Insider commentary piece argues that the real future growth will be in physician centered apps for both the iPad and iPhone. The report includes interviews with McKinsey & Co. as well as an academic at Columbia University. Memorable quote: "But for now, the most widely used health apps are 'faddy' wellness apps, according to McKinsey & Co. Principal Lisa Ellis." [Business Insider](#)

**West Wireless Health Institute open to creative investment structuring:** "We want to stimulate the birth of an industry," WWHI CEO Don Casey told Entrepreneur Magazine in a short but sweet interview. "Our mission is to help these products get out. If that means working on a royalty basis or an equity basis [with entrepreneurs], that's terrific. And if there's another way people want to work, we're open to that." [Entrepreneur](#)

**SMS drug authentication:** Comprehensive feature on startups using SMS and other authentication tactics for drug safety in developing markets. [MobileActive](#)

**Kaiser impressed by iPad trial... so far:** Kaiser Permanente has been testing a pair of iPads in its technology lab to determine whether they are fit for viewing medical images like x-rays, CT scans and accessing medical records. Sean Chai, senior IT manager at Kaiser Permanente, told the Wall Street Journal that Kaiser is also testing a tablet specifically designed for hospitals — likely an MCA tablet like Panasonic's Toughbook H1 or Motion's C5. Chai said that so far KP is impressed by the iPad: "Apple didn't design this for the health-care industry. But it's a tremendous form factor." [Wall Street Journal](#)

**Rundown of rules around using mobile phones in hospitals in the UK:** [D4 Blog](#)

**Mobile operator working on mHealth app for new parents:** Karen Storek, founder of New Parents Network — a popular online community site — told the New York Times that she is actively working with a mobile operator to launch a mobile app version of NPN for users worldwide: "My vision for NPN, which has really kept

me going for the past six years, has been to create a multilingual, culturally sensitive cellphone app that would send parenting tips to people around the world. Even in the third world, people have cellphones, and this could be a free service supported by corporate advertising — for example, Honda could have a 10-second ad that would precede a safety tip about car seats... I have been working for the last few years with major cellphone providers and wireless companies to get this going. I don't have a formal commitment yet, but I'm very close with one major cellphone company. My hope is that it will be a reality within the next six months." [New York Times](#)

**Italy's "magic" wireless health t-shirt:** "MagIC is a regular cotton t-shirt with small parts made of special fibres allowing to check the wearer's breath and heart activity 200 times per second. It is worn like a piece of underwear and does not require the placement of wires or adhesive electrodes on the body." [ePractice.eu](#)

**Three data sensor platforms you should know:** [Read Write Web](#)

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**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 20, 2011 10:58 AM  
**To:** 'nsemonite@vgo.com.com'  
**Subject:** ATA Demonstration  
**Attachments:** St.PetersbergTimes March 25 2011a.docx

Ned,

I am following up concerning a voice message I left for you and a short conversation I had with Ashley. I had an idea I wanted to discuss concerning generating additional interest in our products during the ATA conference.

In short, I would like to demonstrate our solutions working together. I do not believe this will take much time to implement but could drive additional traffic and interest in our products.

As a means of further introduction I have attached a recent article written on our product as well as a link to our website. ([www.igluose.com](http://www.igluose.com))

Please let me know when you have time to speak.

Sincerely,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.806.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 20, 2011 12:38 PM  
**To:** Larry Canipe  
**Subject:** vgo

Larry,

Please call when you have a minute to discuss Vgo demo at ATA.

<http://www.vgocom.com/>

thanks

ME



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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---

**From:** Mary Ellen Harrison  
**Sent:** Thursday, April 21, 2011 1:37 PM  
**To:** Larry Canipe ([larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com))  
**Subject:** FW: ATA Demonstration

Larry

Could you write him about creating an ad hoc wireless connection?

Thanks  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.305.8023  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 20, 2011 8:44 PM  
**To:** Mary Ellen Harrison; [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
**Cc:** Larry Canipe ([larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com))  
**Subject:** RE: ATA Demonstration

Ned,

Thanks for calling me today. I am copying Larry Canipe who is our wireless expert. He understand the requirement you have to support streaming video. He recalled that Sprint's 4G network is available in Tampa. However he concurred with your thoughts that the convention centers may have issues with reception. If you wanted to call him or put him in contact with a technology contact from your team I am sure they could collaberate to create a solution. I have copied Larry on this email and his phone number is 561-322-0246.

Sincerely,  
Mary Ellen

---

**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 20, 2011 10:57 AM  
**To:** [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
**Subject:** ATA Demonstration

Ned,

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In short, I would like to demonstrate our solutions working together. I do not believe this will take much time to implement but could drive additional traffic and interest in our products.

As a means of further introduction I have attached a recent article written on our product as well as a link to our website. ([www.igluucose.com](http://www.igluucose.com))

Please let me know when you have time to speak.

Sincerely,  
Mary Ellen



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---

**From:** Mary Ellen Harrison  
**Sent:** Tuesday, April 26, 2011 9:50 AM  
**To:** 'nsemonite@vgocom.com'  
**Subject:** RE: ATA Demonstration

Ned,

Thank you. I will call you at 10:30.

I look forward to speaking with you then.

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.806.8623  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** nsemonite@vgocom.com [mailto:nsemonite@vgocom.com]  
**Sent:** Tuesday, April 26, 2011 8:09 AM  
**To:** Mary Ellen Harrison  
**Subject:** Re: ATA Demonstration

Yes. Anytime after 10am eastern will work for me.

Ned

Sent from my Handheld

---

**From:** Mary Ellen Harrison <meharrison@positiveidcorp.com>  
**Date:** Mon, 25 Apr 2011 14:41:27 -0700  
**To:** nsemonite@vgocom.com<nsemonite@vgocom.com>  
**Cc:** Larry Canipe (larry.canipe@clevatec.com)<larry.canipe@clevatec.com>  
**Subject:** RE: ATA Demonstration

Ned,

Thanks for speaking with Larry. I know Larry is going to reach out to you later today to provide an update.

In the meantime, would you have time on Tuesday to speak with me about outreach to media.

Thanks  
Mary Ellen



Mary Ellen Harrison  
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**From:** Mary Ellen Harrison  
**Sent:** Thursday, April 21, 2011 5:08 PM  
**To:** nsemonite@vgocom.com  
**Cc:** Larry Canipe (larry.canipe@clevatec.com)  
**Subject:** RE: ATA Demonstration

Ned,

Larry has been in meetings most of the day but he did think it would be possible to support the demo by setting up an ad hoc wireless connection. Larry is on his cell phone the remainder of the day 561-654-5279, if you or someone on your team wanted to speak with him.

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
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mobile 561.317.5136  
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mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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---

**From:** Mary Ellen Harrison  
**Sent:** Tuesday, April 26, 2011 5:26 PM  
**To:** Amanda Tomec  
**Cc:** Allison Tomek (atomek@positiveidcorp.com)  
**Subject:** Futuristic Health Care Demonstration: American Telemedicine Association Event at the Tampa Bay Convention Center. May 2nd and 3rd

Allison,

If you eagle eyes catch any mistakes let me know.

I am sending out to broadcast list so we can get on their radar. WE can revise for other journalist.

PS What do you think of the analogy to OnStar. I think it puts it in very simple terms.

Dear XXX,

As you are the XXXX I thought you would be interested in a trade show and live demonstration we are planning Monday and Tuesday next week (May 2<sup>nd</sup> and 3<sup>rd</sup>).

The event is the American Telemedicine Association's Annual Meeting and Exposition which will be at the Tampa Convention Center. The live demonstration will involve two innovative wireless health solutions working together to provide a view of the future of health care that is available today.

igluce is a device that connects to industry leading glucometers and sends data via the GSM network to the web. From this point this information can be shared with family members and health care professionals. In essence this is a mobile monitoring solution. In the same way an vehicle's OnStar system knows important information about the vehicle and can communicate accordingly, igluce knows the condition of a person with diabetes and can communicate according to that individual's preferences. For the 25.8 million Americans with diabetes the opportunity is to revolutionize the way they manage their disease while both reducing costs and providing greater value. (For more information visit [www.igluce.com](http://www.igluce.com))

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Our live demonstration will show a student using igluce in a "classroom environment" (Booth 1340) once the student checks their blood glucose readings a text message will be sent to the "remote school nurse" (in Boston). We will simulate a low blood sugar reading which will prompt the Vgo to check on the Student in Tampa. The Vgo will travel from booth 1040 to booth 1340 all under the control of the nurse in Boston. She will then have a short conversation with the student and advise the student of actions to take to stabilize her blood sugar.

This all sounds very futuristic... wireless monitors and remote school nurses..... However, this solution is available today. Our scenario is just one of many that are possible using the power of wireless to transform health care as we know it today.

We think you viewers would be very interested in seeing this futuristic technology that is being showcased in their area. We will follow up by phone. In the meantime please do not hesitate to contact me or Amanda Tomec if you would like more information.

For pre-meeting media registration contact Ben Forstag, ATA Director of Communications, at [bforstag@americantelemed.org](mailto:bforstag@americantelemed.org) On-site registration is also available

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
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mobile 561.317.5136  
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---

**From:** Mary Ellen Harrison  
**Sent:** Tuesday, April 26, 2011 5:36 PM  
**To:** 'markholan@bizjournals.com'  
**Cc:** Amanda Tomec  
**Subject:** RE: Futuristic Health Care Demostration: American Telemedicine Association Event at the Tampa Bay Convention Center- May 2<sup>nd</sup> and 3<sup>rd</sup>

Dear Mark,

As you cover Technology for the Tampa Bay Business Journal, I thought you would be interested in a trade show and live demonstration we are planning Monday and Tuesday next week (May 2<sup>nd</sup> and 3<sup>rd</sup>).

The event is the American Telemedicine Association's Annual Meeting and Exposition which will be at the Tampa Convention Center. The live demonstration will involve two innovative wireless health solutions working together to provide a view of the future of health care that is available today.

igluose is a device that connects to industry leading glucometers and sends data via the GSM network to the web. From this point this information can be shared with family members and health care professionals. In essence this is a mobile monitoring solution. In the same way an vehicle's OnStar system knows important information about the vehicle and can communicate accordingly, igluose knows the condition of a person with diabetes and can communicate according to that individual's preferences. For the 25.8 million Americans with diabetes the opportunity is to revolutionize the way they manage their disease while both reducing costs and providing greater value. (For more information visit [www.igluose.com](http://www.igluose.com) )

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This all sounds very futuristic... wireless monitors and remote school nurses..... However, this solution is available today. Our scenario is just one of many that are possible using the power of wireless to transform health care as we know it today.

We think you readers would be very interested in seeing this futuristic technology that is being showcased in their area. We will follow up by phone. In the meantime please do not hesitate to contact me or Amanda Tomec if you would like more information.

For pre-meeting media registration contact Ben Forstag, ATA Director of Communications, at [bforstag@americantelemed.org](mailto:bforstag@americantelemed.org) On-site registration is also available

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
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---

**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 27, 2011 6:35 PM  
**To:** nsemonite@vgo.com.com  
**Cc:** Larry Canipe (larry.canipe@clevatec.com); Amanda Tomec  
**Subject:** ATA Demo  
**Attachments:** Copy of Tampa Publication List (2).xlsx; ATABackgrounderVgoPSID.docx

Ned,

I was hoping to put this document together earlier.

In short, it summarizes our plan for a joint demo. I called ATA and they are checking into one minor point about using common area. I assured them we are using common are to transverse not to demonstrate. If they do have a concern we could always demonstrate in one booth at 12:30 and the other booth at 2:30.

There are a few more items to discuss such as creating a simple card to hand out to promote the demo. We are outreaching to local journalists. The pitch we are using is basically the verbiage in the description of the joint demonstration.

The broadcast list we have is attached.

The time line in the attached document is outlined below. Let me know what you think?

#### **Actions Required to Demonstrate**

**By Thursday April 28<sup>th</sup>:** Obtain clarification from ATA if we can have the Vgo unit transverse the one aisle for less than 20 seconds two times a day. If the unit cannot transverse the back aisle then the suggestion is to bring iglucose to the Vgo booth for one Demo and bring the Vgo to the iglucose booth for one demo each day.

**By Friday April 29<sup>th</sup>:** Approve Press Release announcing the Demo

Decide if we want a small card to hand out to promote the demo.

**Sunday:** Larry Canipe will call XXX from Vgo to make sure the system works.

PSID will input the phone number for the person from Vgo that will be controlling the Vgo unit. This way the person will receive a text message on their phone when the "student" uses iglucose.

**Monday:** Demonstrations at 12:30 and 2:30

**Tuesday:** Demonstrations at 12:30 and 2:30

I am on my cell phone 561-317-3136 if you need anything else.

Thanks  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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---

**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 27, 2011 6:54 PM  
**To:** Sandy Hung (shung@americantelemed.org)  
**Subject:** Follow up to phone call

Sandy,

Thanks for speaking with me today. Thanks for your offer to double check what we are doing does not break any rules.

I think it helps to consider the demonstration will take place in each of our booths. However, having the vgo transverse from one place to another in a period of about 5-8 seconds twice a day to facilitate the demo is not using common area any more than having other human staff transvers from one area to another during the trade show.

We would not anticipate the 5-8 seconds part of the demo. As there is a 20 foot aisle at the back of the center the vgo could go to the far side of the aisle. It will only pass behind 3 other exhibitors. This should not be disruptive.

We think the benefit of showing collaboration is very exciting and hopefully promotes innovation.

The scenario for the demonstration is as follows.

Our live demonstration will show a student using iglucose in a "classroom environment" once the student checks their blood glucose readings a text message will be sent to the "remote school nurse" (in Boston). We will simulate a low blood sugar reading which will prompt the Vgo to check on the Student in Tampa. The person in nurse in Boston will have a short conversation with the student (in Tampa) and advise the student of actions to take to stabilize her blood sugar.

This all sounds very futuristic... wireless mobile monitors and virtual school nurses..... However, this solution is possible today. Our scenario is just one of many that are possible using the power of wireless to transform health care as we know it!

#### Background

iglucose is a device that connects to industry leading glucometers and sends data via the GSM network to the web. From this point this information can be shared with family members and health care professionals. In essence this is a mobile monitoring solution. In the same way an vehicle's OnStar system knows important information about the vehicle and can communicate accordingly, iglucose knows the condition of a person with diabetes and can communicate according to that individual's preferences. For the 25.8 million Americans with diabetes the opportunity is to revolutionize the way they manage their disease while both reducing costs and providing greater value. (For more information visit [www.iglucose.com](http://www.iglucose.com) )

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Thanks  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
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**From:** Ned Semonite <nsemonite@vgocom.com>  
**Sent:** Wednesday, April 27, 2011 11:33 PM  
**To:** Mary Ellen Harrison  
**Cc:** 'Larry Canipe'; Amanda Tomec; 'Jonathan Lai'  
**Subject:** RE: ATA

Mary Ellen,  
That's great. I got your other emails and attachments – Thank You – I'll review and will be in touch tomorrow.  
Ned

---

Ned Semonite  
VP, Product Management and Marketing  
[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)



<http://www.vgocom.com>

**From:** Mary Ellen Harrison [<mailto:meharrison@positiveidcorp.com>]  
**Sent:** Wednesday, April 27, 2011 7:58 PM  
**To:** [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
**Cc:** Larry Canipe ([larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com))  
**Subject:** RE: ATA

Ned,

Great news I spoke to ATA at about 6:30 today and they are perfectly fine with our planned demonstration!!!

Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
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**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 27, 2011 6:37 PM  
**To:** [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
**Subject:** ATA

Ned,

FYI Media list in case it is of interest.

Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
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**From:** Benjamin Forstag [<mailto:BForstag@americantelemed.org>]  
**Sent:** Wednesday, April 27, 2011 6:28 PM  
**To:** Mary Ellen Harrison  
**Subject:** RE: ATA

Mary Ellen:

I apologize for the delay in getting this information to you. I got sidetracked this afternoon on a different project that required immediate attention.

Attached are the lists of pre-registered ATA 2011 press, as well as the ATA 2010 press. Last year's list is a bit... paltry... but we expect much more press this year. (We've actually hired a PR firm to help promote the event with the media and encourage press attention.)

If you have any additional questions, please feel free to contact me again.

Cheers,

**Benjamin Forstag**  
Director of Communications  
**American Telemedicine Association**  
1100 Connecticut Avenue, NW; Suite 540  
Washington, DC 20036  
Tel.: 202-223-3333  
Fax: 202-223-2787

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**From:** Mary Ellen Harrison [<mailto:meharrison@positiveidcorp.com>]  
**Sent:** Wednesday, April 27, 2011 4:39 PM  
**To:** Benjamin Forstag  
**Subject:** ATA

Ben,

I did not have your phone number, however I wanted to speak with you about a demo we are planning with another ATA exhibitor.

Could you please call me.

Thank You,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
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**From:** Allison Tomek  
**Sent:** Thursday, April 28, 2011 4:41 PM  
**To:** Mary Ellen Harrison  
**Subject:** RE: Suggestions for press release  
**Attachments:** 20110502\_PSID\_iglucose\_VGo\_1.1.doc

I omitted the links you put in for iglucose and VGo because I had already inserted hyperlinks higher up in the release, which is better for SEO.

I made a couple of other edits. Please see attached. If you are OK with it, send it along!

Thanks.

**From:** Mary Ellen Harrison  
**Sent:** Thursday, April 28, 2011 4:28 PM  
**To:** Allison Tomek  
**Subject:** RE: Suggestions for press release

Allison,

Are these few changes OK

ME



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Mary Ellen Harrison  
**Sent:** Thursday, April 28, 2011 11:59 AM  
**To:** Allison Tomek ([atomek@positiveidcorp.com](mailto:atomek@positiveidcorp.com))  
**Subject:** Suggestions for press release

PositiveID and Vgo Communications demonstrate futuristic health care solution that is possible today

Virtual Nurses...Mobile Monitoring it all sounds very futuristic however two wireless innovators have collaborated to demonstrate of the power of wireless to transform health care as we know it.

Both solutions are focused on new models for providing greater value for the patient while reducing costs for the payor.

The demonstration will be at 12:30 and 2:30 on Monday and Tuesday of the show.

Details are in the attached memo.

Thanks  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Ned Semonite <nsemonite@vgocom.com>  
**Sent:** Thursday, April 28, 2011 3:47 PM  
**To:** 'Larry Canipe'  
**Cc:** Amanda Tomec; 'Jonathan Lai'; Mary Ellen Harrison  
**Subject:** RE: ATA an d Positive ID

Yes of course – will have that info to you by the end of the day.

---

Ned Semonite  
VP, Product Management and Marketing  
nsemonite@vgocom.com  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)



<http://www.vgocom.com>

**From:** Larry Canipe [mailto:larry.canipe@clevatec.com]  
**Sent:** Thursday, April 28, 2011 3:45 PM  
**To:** 'Ned Semonite'  
**Cc:** 'Amanda Tomec'; 'Jonathan Lai'; 'Mary Ellen Harrison'  
**Subject:** RE: ATA an d Positive ID

Hi Ned,

Can we get an onsite contact for Vgo while we are setting up on Sunday. I would like to make sure we can get the full system demo. My contact information is below.

Looking forward to meeting with you and the show.

Thanks,



Larry Canipe  
Technical Managment  
PositiveID Corporation  
phone 561.322 0246  
mobile 561.664 5279  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

**From:** Ned Semonite [mailto:nsemonite@vgocom.com]  
**Sent:** Wednesday, April 27, 2011 11:33 PM  
**To:** 'Mary Ellen Harrison'

**Cc:** 'Larry Canipe'; 'Amanda Tomec'; 'Jonathan Lai'  
**Subject:** RE: ATA

Mary Ellen,  
That's great. I got your other emails and attachments – Thank You – I'll review and will be in touch tomorrow.  
Ned

---

Ned Semonite  
VP, Product Management and Marketing  
[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)



<http://www.vgocom.com>

**From:** Mary Ellen Harrison [<mailto:meharrison@positiveidcorp.com>]  
**Sent:** Wednesday, April 27, 2011 7:58 PM  
**To:** nsemonite@vgocom.com  
**Cc:** Larry Canipe ([larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com))  
**Subject:** RE: ATA

Ned,

Great news I spoke to ATA at about 6:30 today and they are perfectly fine with our planned demonstration!!!

Mary Ellen



Mary Ellen Harrison  
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**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 27, 2011 6:37 PM  
**To:** nsemonite@vgocom.com  
**Subject:** ATA

Ned,

FYI Media list in case it is of interest.

Mary Ellen



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**From:** Benjamin Forstag [mailto:BForstag@americantelemed.org]  
**Sent:** Wednesday, April 27, 2011 6:28 PM  
**To:** Mary Ellen Harrison  
**Subject:** RE: ATA

Mary Ellen:

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Attached are the lists of pre-registered ATA 2011 press, as well as the ATA 2010 press. Last year's list is a bit... paltry... but we expect much more press this year. (We've actually hired a PR firm to help promote the event with the media and encourage press attention.)

If you have any additional questions, please feel free to contact me again.

Cheers,

**Benjamin Forstag**  
Director of Communications  
**American Telemedicine Association**  
1100 Connecticut Avenue, NW; Suite 540  
Washington, DC 20036  
Tel.: 202-223-3333  
Fax: 202-223-2787

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**From:** Mary Ellen Harrison [mailto:meharrison@positiveidcorp.com]  
**Sent:** Wednesday, April 27, 2011 4:39 PM  
**To:** Benjamin Forstag  
**Subject:** ATA

Ben,

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Thank You,  
Mary Ellen



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**From:** Mary Ellen Harrison  
**Sent:** Thursday, April 28, 2011 5:02 PM  
**To:** 'Jonathan Lai'  
**Cc:** Allison Tomek (atomek@positiveidcorp.com); nsemonite@vgocom.com; Amanda Tomec  
**Subject:** RE: ATA press outreach  
**Attachments:** 20110502\_PSID\_iglucose\_VGo\_1 1.doc

Jonathan,

Thanks for reaching out. Yes it would be great to discuss outreach. We welcome all the outreach and ideas you can offer.

I am copying Allison Tomek our SVP of Investor Relations that will be working on the press release from our side. Additionally our Marketing Assistant Amanda Tomec will be onsite to assist with press activities. (She is copied on this email as well.)

Attached is a version of the release Allison put together. Please let us have your comments or suggestions.

We have an annual service for issuing releases so we are happy to issue the release.

Please let us know if you are planning to attend.

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
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**From:** Jonathan Lai [mailto:jlai@bespokencomm.com]  
**Sent:** Thursday, April 28, 2011 4:14 PM  
**To:** Mary Ellen Harrison  
**Subject:** Re: ATA press outreach

Hi Mary Ellen,

I work with VGo on external communications and public relations. Ned forwarded over the press lists that you put together. I'm dropping you a line to see if you'd like some help outreaching to that list. I can also be available to discuss any joint press-related communications outside of what you and he have already discussed regarding booth demos.

Cheers,

Jonathan Lai  
BESPOKEN | Communications  
mobile: (415) 218-4209  
[jlai@bespokencomm.com](mailto:jlai@bespokencomm.com)

On Apr 27, 2011, at 8:33 PM, Ned Semonite wrote:

Mary Ellen,

That's great. I got your other emails and attachments – Thank You – I'll review and will be in touch tomorrow.  
Ned

---

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VP, Product Management and Marketing  
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978-831-3195 (Mobile)  
<image001.jpg>  
<http://www.vgocom.com>

**From:** Mary Ellen Harrison [<mailto:meharrison@positiveidcorp.com>]  
**Sent:** Wednesday, April 27, 2011 7:58 PM  
**To:** [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
**Cc:** Larry Canipe ([larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com))  
**Subject:** RE: ATA

Ned,

Great news I spoke to ATA at about 6:30 today and they are perfectly fine with our planned demonstration!!!

Mary Ellen

<image003.jpg>Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Mary Ellen Harrison  
**Sent:** Wednesday, April 27, 2011 6:37 PM  
**To:** [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
**Subject:** ATA

Ned,

FYI Media list in case it is of interest.

Mary Ellen

<image005.jpg>Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation

phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Benjamin Forstag [mailto:BForstag@americantelemed.org]  
**Sent:** Wednesday, April 27, 2011 6:28 PM  
**To:** Mary Ellen Harrison  
**Subject:** RE: ATA

Mary Ellen:

I apologize for the delay in getting this information to you. I got sidetracked this afternoon on a different project that required immediate attention.

Attached are the lists of pre-registered ATA 2011 press, as well as the ATA 2010 press. Last year's list is a bit... paltry... but we expect much more press this year. (We've actually hired a PR firm to help promote the event with the media and encourage press attention.)

If you have any additional questions, please feel free to contact me again.

Cheers,

**Benjamin Forstag**  
Director of Communications  
**American Telemedicine Association**  
1100 Connecticut Avenue, NW; Suite 540  
Washington, DC 20036  
Tel.: 202-223-3333  
Fax: 202-223-2787

**Network with ATA »** [ATA Homepage](#) | [The HUB](#) | [Facebook](#) | [LinkedIn](#) | [Twitter](#)

**From:** Mary Ellen Harrison [mailto:meharrison@positiveidcorp.com]  
**Sent:** Wednesday, April 27, 2011 4:39 PM  
**To:** Benjamin Forstag  
**Subject:** ATA

Ben,

I did not have your phone number, however I wanted to speak with you about a demo we are planning with another ATA exhibitor.

Could you please call me.

Thank You,  
Mary Ellen

<image003.jpg>Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation

phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveDcorp.com](http://www.PositiveDcorp.com)

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---

**From:** Mary Ellen Harrison  
**Sent:** Thursday, April 28, 2011 6:42 PM  
**To:** 'Ned Semonite'; [larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com); Amanda Tomec  
**Cc:** Thomas Ryden; Ashley Wells  
**Subject:** RE: VGo logistics

Great!

Thank you,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Ned Semonite [<mailto:nsemonite@vgocom.com>]  
**Sent:** Thursday, April 28, 2011 5:43 PM  
**To:** Mary Ellen Harrison; [larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com); Amanda Tomec  
**Cc:** Thomas Ryden; Ashley Wells  
**Subject:** VGo logistics

Hi All,

At ATA, VGo has a 10x10 booth.

Staffing the VGo booth will be:

Ned Semonite [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com) 978-831-3195

Tom Ryden [tryden@vgocom.com](mailto:tryden@vgocom.com) 617-543-4778

Ashley Wells [awells@vgocom.com](mailto:awells@vgocom.com) 603-801-7645 (iGlucose sends message to this number)

"Nurse Ashley" will physically be in Boston but in the booth via VGo provided 4G is working OK. If 4G is not working OK, she will physically be in the booth and we'll be operating VGo's using our self-contained "demo network".

Tom will be at the convention center 1<sup>st</sup> thing on Sunday to setup the booth and the demonstrations (Ned arrives mid-afternoon, Ashley late Sun if flying from Boston). Tom's first order of business will be to setup and test the 4G on the VGo with Ashley in Boston. The plan is to try to do that at about 10am (provided crates are there, etc). Testing will include driving the route between the VGo and PositiveID booths. Next, the VGo demo network will be setup and tested. We will determine if there are any issues with driving the VGo to the PositiveID booth using the demo network (we don't expect any). We will use that if the 4G tests are not successful on Sunday. Note: we may have to fall back to

our demo network if we learn that 4G “develops” issues once the conference starts and everybody else at the show is all “lit up”.

We look forward to meeting everyone. I’m sure Tom and Larry will connect on Sunday morning.

Mary Ellen, I’ll be sending you another email with a few comments.

Best . . . Ned

---

Ned Semonite  
VP, Product Management and Marketing  
[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)



<http://www.vgocom.com>

---

**From:** Allison Tomek  
**Sent:** Sunday, May 01, 2011 6:28 PM  
**To:** Ned Semonite  
**Cc:** Mary Ellen Harrison; 'Jonathan Lai'  
**Subject:** RE: Final release  
**Attachments:** 20110502\_PSID\_igluose\_VGo\_FINAL\_AT.doc

All,

The attached release will go out at 8:30 am ET tomorrow unless there are any critical changes to be made. We cannot refer to our product as offering real-time monitoring, etc., and cannot call our products operating together a "joint solution" as we prepare for our FDA 510(k). We must be very careful what we say and do not want it to appear that we are changing our system, making health-related claims, etc.

Thanks for your understanding.

Best,

Allison Tomek  
Sr. VP of Investor Relations and Corporate Communications  
PositiveID Corporation  
561-805-8044

---

**From:** Ned Semonite [nsemonite@vgocom.com]  
**Sent:** Sunday, May 01, 2011 4:37 PM  
**To:** Allison Tomek  
**Cc:** Mary Ellen Harrison; 'Jonathan Lai'  
**Subject:** Final release

Hi Allison,

Can you send me the final version of the press release? I'd like to see it and we'll want to get it on our website.  
Thanks

---

Ned Semonite  
VP, Product Management and Marketing  
[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)



<http://www.vgocom.com>

---

**From:** Mary Ellen Harrison  
**Sent:** Sunday, May 01, 2011 11:34 PM  
**To:** 'Ned Semonite'; 'Ashley Wells'; larry.canipe@clevatec.com  
**Cc:** 'Thomas Ryden'; 'tdorland@positiveidcorp.com  
**Subject:** RE: VGo logistics

Ned,

Thanks.

Triana can sit in for Amanda until Amanda and I arrive at about 10:00.

Thanks  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Ned Semonite [mailto:nsemonite@vgocom.com]  
**Sent:** Sunday, May 01, 2011 11:18 PM  
**To:** Mary Ellen Harrison; 'Ashley Wells'; larry.canipe@clevatec.com  
**Cc:** 'Thomas Ryden'; 'tdorland@positiveidcorp.com  
**Subject:** RE: VGo logistics

Powerpoint looks fine.

It would be good for Ashley and Amanda to do a rehearsal prior to the first demo.

FYI – No problems driving the VGo between the booths this evening.

Ned

---

Ned Semonite  
VP, Product Management and Marketing  
[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)



<http://www.vgocom.com>

**From:** Mary Ellen Harrison [mailto:meharrison@positiveidcorp.com]  
**Sent:** Sunday, May 01, 2011 11:09 PM  
**To:** Ashley Wells; 'Ned Semonite'; larry.canipe@clevatec.com  
**Cc:** 'Thomas Ryden'; 'tdorland@positiveidcorp.com'  
**Subject:** RE: VGo logistics

Ashley,

Thank you for your email. Triana will be updating our system with your mobile phone number. She will also provide you with credentials to log into the website to view readings as they come in from iglucose.

Ned, Ashley and Tom,

I put together a power point to introduce the demo. We can change it on the fly tomorrow if you wish.

Ashley,

I will be on my cell phone tomorrow morning from about 7 am please call me if you have questions 561-317-5136.

My thought is that you would announce that you just received notice that one of the students under your care has just tested their blood glucose levels and has a very low blood glucose reading.

When you are speaking with the Student (Amanda) I would suggest the following script something like the one outlined below.

Nurse: " Hi Amanda, I just received a text with your latest blood glucose reading. Your blood glucose level is low. How are you feeling?

Amanda: I am feeling a bet weak.

Nurse: What did you have for breakfast today? (Lunch during the 2:30 DEMO )

Amanda: Pause

Nurse: Amanda, did you remember to have your breakfast/lunch?

Amanda: No.

Nurse: Amanda it is important that you not skip any meals. I know you are busy but eating balanced meal is just as important as your school work. You want to feel your best all the time. Do you have a snack or something to eat?

Amanda: Yes, let me check my backpack. I have an apple and a meal replacement bar.

Nurse: I can see the meal replacement bar is high in protein. Does it say low carb on the label.

Amanda: Yes it does.

Nurse: Then I would suggest you try the meal replacement bar and then check your blood glucose levels in 15 minutes.

Amanda: OK

Nurse: Thanks Amanda, I hope you feel better. And by the way I did see that KitKat Bar in your bag. Could you promise me you'll give it to a friend.

Amanda: Yes I will. Thanks for checking on me...

Nurse: You're welcome Amanda.

Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Ashley Wells [mailto:[awells@vgocom.com](mailto:awells@vgocom.com)]  
**Sent:** Sunday, May 01, 2011 10:01 PM  
**To:** Mary Ellen Harrison; 'Ned Semonite'; [larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com)  
**Cc:** 'Thomas Ryden'; [tdorland@positiveidcorp.com](mailto:tdorland@positiveidcorp.com)  
**Subject:** RE: VGo logistics

Hi Mary,

My cell phone number is 603-801-7645.

Ashley S. Wells  
Office Manager



**VGo Communications, Inc.**  
100 Innovative Way, Suite 3321  
Nashua, NH 03062  
p. (603) 880-8040  
f. (603) 880-9040  
e. [awells@vgocom.com](mailto:awells@vgocom.com)

**From:** Mary Ellen Harrison [mailto:[meharrison@positiveidcorp.com](mailto:meharrison@positiveidcorp.com)]  
**Sent:** Sunday, May 01, 2011 2:45 PM  
**To:** Ned Semonite; [larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com)  
**Cc:** Thomas Ryden; Ashley Wells; [tdorland@positiveidcorp.com](mailto:tdorland@positiveidcorp.com)  
**Subject:** RE: VGo logistics

Ned,

I just spoke with Larry and he unfortunately he did not find Tom to test that everything was working.

Larry has left Tom and Voice message.

Ashley,

Could you please send us your mobile phone number for alerts to be sent.

Thank you,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Ned Semonite [mailto:[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)]  
**Sent:** Thursday, April 28, 2011 5:43 PM  
**To:** Mary Ellen Harrison; [larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com); Amanda Tomec  
**Cc:** Thomas Ryden; Ashley Wells  
**Subject:** VGo logistics

Hi All,

At ATA, VGo has a 10x10 booth.

Staffing the VGo booth will be:

Ned Semonite [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com) 978-831-3195

Tom Ryden [tryden@vgocom.com](mailto:tryden@vgocom.com) 617-543-4778

Ashley Wells [awells@vgocom.com](mailto:awells@vgocom.com) 603-801-7645 (iGlucose sends message to this number)

"Nurse Ashley" will physically be in Boston but in the booth via VGo provided 4G is working OK. If 4G is not working OK, she will physically be in the booth and we'll be operating VGos using our self-contained "demo network".

Tom will be at the convention center 1<sup>st</sup> thing on Sunday to setup the booth and the demonstrations (Ned arrives mid-afternoon, Ashley late Sun if flying from Boston). Tom's first order of business will be to setup and test the 4G on the VGo with Ashley in Boston. The plan is to try to do that at about 10am (provided crates are there, etc). Testing will include driving the route between the VGo and PositiveID booths. Next, the VGo demo network will be setup and tested. We will determine if there are any issues with driving the VGo to the PositiveID booth using the demo network (we don't expect any). We will use that if the 4G tests are not successful on Sunday. Note: we may have to fall back to our demo network if we learn that 4G "develops" issues once the conference starts and everybody else at the show is all "lit up".

We look forward to meeting everyone. I'm sure Tom and Larry will connect on Sunday morning.

Mary Ellen, I'll be sending you another email with a few comments.

Best . . . Ned

---

Ned Semonite

VP, Product Management and Marketing  
[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)



<http://www.vgocom.com>

---

**From:** PositiveID <newsdesk@broadcast.shareholder.com>  
**Sent:** Monday, May 02, 2011 8:37 AM  
**To:** Mary Ellen Harrison  
**Subject:** PositiveID Corporation and VGo Communications to Host Joint Demonstration of Wireless Health Solutions at American Telemedicine Association Conference



**PositiveID Corporation and VGo Communications to Host Joint Demonstration of Wireless Health Solutions at American Telemedicine Association Conference**

**Robotic Telepresence and Mobile Health Monitoring Services Offer Innovative Care Options to Healthcare Providers**

TAMPA, Fla., May 2, 2011 (GLOBE NEWSWIRE) -- PositiveID Corporation ("PositiveID") (Nasdaq:PSID), a leader in next-generation patient monitoring and diagnostics, and VGo Communications, Inc. ("VGo"), the leading provider of robotic telepresence solutions, announced today that the companies will host a joint demonstration of their innovative wireless health solutions working together at the American Telemedicine Association Annual International Meeting and Exhibition 2011 in Tampa, Florida. The companies will demonstrate PositiveID's iglucose™ wireless communication device for diabetes management operating in conjunction with VGo's robotic telepresence to show the ability of wireless technology to transform healthcare through mobile interaction between patients and healthcare providers.

**Demonstration Details**

Demos will take place twice daily on May 2 and 3 at 12:30 pm ET and 2:30 pm ET in PositiveID's booth (#1340).

The live demonstration will show a student using iglucose in a hypothetical classroom environment. Once the student checks her blood glucose readings, a text message will be sent via iglucose to the "remote school nurse" (in Boston). The student's low blood sugar reading will prompt the nurse, using a VGo, to check on the student in Tampa. The VGo will travel from its booth (#1040) to booth #1340, all under the control of the nurse in Boston. The nurse will then have a short face-to-face conversation with the student and advise the student of actions to take to stabilize her blood sugar.

**About iglucose**

iglucose uses the power of mobile technology to revolutionize the way individuals with diabetes manage their condition. iglucose wirelessly communicates blood glucose readings from data-capable glucometers to the iglucose database, where they can be shared with family members and health care professionals via email, text message or the database itself. For the 25.8 million Americans with diabetes, iglucose can help revolutionize the way they manage their disease, while reducing costs and providing greater convenience and freedom.

**About VGo**

Through VGo's robotic telepresence, an individual's presence is established in a distant location such that they can interact and perform their job in ways not previously possible. VGo allows an individual to see, hear, interact and move around in any remote site, just as if that person were there. VGo is not a videoconferencing/telepresence solution. With a videoconference, two or more people meet through TV monitors or PCs where people on both sides of the call must be sitting there in front the camera. With VGo, a person is completely independent of the people in the remote location. VGo's remote controlled mobility and physical presence makes it something totally new.

**About VGo Communications, Inc.**

VGo Communications, Inc. develops and markets visual communications solutions for the workplace. VGo's experienced successful

veterans of visual communications and robotics industries are leveraging the recent trends of widespread wireless high speed networks, lower specialized component costs and the universal acceptance of video as a communications medium to create a new market category called "Robotic Telepresence."

### About PositiveID Corporation

PositiveID Corporation develops and markets healthcare and information management products through its diagnostic devices and identification technologies, and its proprietary disease management tools. PositiveID's implantable healthcare devices and external hardware and software products are designed to communicate wirelessly to improve healthcare and the patient's quality of life. For more information on PositiveID, please visit [www.PositiveIDCorp.com](http://www.PositiveIDCorp.com).

The PositiveID Corporation logo is available at <http://www.globenewswire.com/newsroom/prs/?pkqid=7717>

*Statements about PositiveID's future expectations, including the ability of iglucose to transform healthcare through mobile interaction between patients and healthcare providers; the ability of iglucose to use the power of mobile technology to revolutionize the way individuals with diabetes manage their condition; the likelihood that iglucose can help revolutionize the way the 25.8 million Americans with diabetes manage their disease while reducing costs and providing greater convenience and freedom; and all other statements in this press release other than historical facts are "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, Section 21E of the Securities Exchange Act of 1934, and as that term is defined in the Private Litigation Reform Act of 1995. Such forward-looking statements involve risks and uncertainties and are subject to change at any time, and PositiveID's actual results could differ materially from expected results. These risks and uncertainties include the Company's ability to successfully commercialize iglucose, as well as certain other risks. Additional information about these and other factors that could affect the Company's business is set forth in the Company's various filings with the Securities and Exchange Commission, including those set forth in the Company's 10-K filed on March 25, 2011, under the caption "Risk Factors." The Company undertakes no obligation to update or release any revisions to these forward-looking statements to reflect events or circumstances after the date of this statement or to reflect the occurrence of unanticipated events, except as required by law.*

CONTACT: Allison Tomek

561-805-8000

[atomek@positiveidcorp.com](mailto:atomek@positiveidcorp.com)

Dan Schustack

CEOcast

212-732-4300

[dschustack@ceocast.com](mailto:dschustack@ceocast.com)



Source: PositiveID Corporation

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To update your e-mail and alert preferences, please [click here](#).

To unsubscribe, please [click here](#).

PositiveID  
1690 South Congress , Delray Beach, FL 33445  
Service provided by Shareholder.com

---

**From:** Mary Ellen Harrison  
**Sent:** Wednesday, May 04, 2011 10:15 AM  
**To:** 'shepard doniger'; Allison Tomek  
**Cc:** Amanda Tomec  
**Subject:** RE: ata

Shep,

Thanks again for your help.

We look forward to hearing of the outcome.

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** shepard doniger [mailto:[sdoniger@bdcginc.com](mailto:sdoniger@bdcginc.com)]  
**Sent:** Tuesday, May 03, 2011 9:25 AM  
**To:** Mary Ellen Harrison; Allison Tomek  
**Cc:** Amanda Tomec  
**Subject:** RE: ata

Team,

I have re-pitched via email every news outlet on the Tampa list you guys created plus hundreds more on the list I put together for the market. I also have a few calls out to broadcast news assignment desks and a few of the health and medical folks as well. I will let you know if and when I hear anything. As far as I am concerned the market is blanketed with our press announcement and a request to come cover this demo so let' see if we can get some quick turnaround.

Shep

---

**From:** Mary Ellen Harrison [mailto:[meharrison@positiveidcorp.com](mailto:meharrison@positiveidcorp.com)]  
**Sent:** Tuesday, May 03, 2011 7:48 AM  
**To:** Shepard Doniger; Allison Tomek  
**Cc:** Amanda Tomec  
**Subject:** ata

Shep,

The demos are going well. They are at our booth 1340 and Ned has let me do all the talking he is just there to answer questions. I created this slide to provide an overview of what we are presenting prior to running the demo.

Journalists just need to come to the convention center and provide credentials. They can call Ben (use the cell phone) see below.

**Benjamin Forstag**

Director of Communications

**American Telemedicine Association**

1100 Connecticut Avenue, NW; Suite 540

Washington, DC 20036

Tel.: 202-223-3333

Fax: 202-223-2787 cellphone at 202-664-2144.

**IF YOU HAVE ANY SUCCESS CALL AMANDA (704-654-7654) OR ME ON OUR CELL PHONES. (561-317-5136)**

Did you get the email I composed to reach out to press. Allison created a cleaner version. See below.

Additionally you may want to reach out to Vgo's PR person. He was reaching out to journalist.

Jonathan Lai  
BESPOKEN | Communications  
mobile: (415) 218-4209  
[jlai@bespokenncomm.com](mailto:jlai@bespokenncomm.com)

THANKS  
ME

As you cover Technology for News Channel 8, I thought you would be interested in a trade show and live demonstration we are planning Monday and Tuesday next week (May 2<sup>nd</sup> and 3<sup>rd</sup>).

The event is the American Telemedicine Association's Annual Meeting and Exposition which will be at the Tampa Convention Center. The live demonstration will involve two innovative wireless health solutions working together to provide a view of the future of health care that is available today.

igluce is a device that connects to industry leading glucometers and sends data via the GSM network to the web. From this point this information can be shared with family members and health care professionals. In essence this

is a mobile monitoring solution. In the same way an vehicle's OnStar system knows important information about the vehicle and can communicate accordingly, iglucose knows the condition of a person with diabetes and can communicate according to that individual's preferences. For the 25.8 million Americans with diabetes the opportunity is to revolutionize the way they manage their disease while both reducing costs and providing greater value. (For more information visit [www.iglucose.com](http://www.iglucose.com) )

VGo enables you to be present and mobile in and throughout a distant location. You can see, hear, talk, interact, and move around just as if you were there. With VGo, you can go anywhere. VGo is not a videoconferencing/telepresence solution. With a videoconference, two or more people are meeting through TV monitors or PCs where people on both sides of the call must be sitting there in front the camera. With VGo, a person is completely independent of the people in the remote location. You don't make a call – you just go there – your presence is established remotely via VGo's physical presence. VGo's remote controlled mobility and physical presence makes it something totally new. ([www.vgocom.com](http://www.vgocom.com))

Our live demonstration will show a student using iglucose in a "classroom environment" (Booth 1340) once the student checks their blood glucose readings a text message will be sent to the "remote school nurse" (in Boston). We will simulate a low blood sugar reading which will prompt the Vgo to check on the Student in Tampa. The Vgo will travel from booth 1040 to booth 1340 all under the control of the nurse in Boston. She will then have a short conversation with the student and advise the student of actions to take to stabilize her blood sugar.

This all sounds very futuristic... wireless monitors and remote school nurses..... However, this solution is available today. Our scenario is just one of many that are possible using the power of wireless to transform health care as we know it today.

We think your viewers would be very interested in seeing this futuristic technology that is being showcased in their area. We will follow up by phone. In the meantime please do not hesitate to contact me or Amanda Tomec if you would like more information.

For pre-meeting media registration contact Ben Forstag, ATA Director of Communications, at [bforstag@americantelemed.org](mailto:bforstag@americantelemed.org) On-site registration is also available



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8023  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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**From:** Shepard Doniger [mailto:[sdoniger@bdcginc.com](mailto:sdoniger@bdcginc.com)]  
**Sent:** Monday, May 02, 2011 4:41 PM  
**To:** Allison Tomec  
**Cc:** Mary Ellen Harrison; Amanda Tomec  
**Subject:** Re: Final release

Great and I am continuing to make calls and send emails to garner coverage

Sent from my iPhone

On May 2, 2011, at 4:35 PM, Allison Tomek <[atomek@positiveidcorp.com](mailto:atomek@positiveidcorp.com)> wrote:

Mary Ellen and Amanda,

Please see below. Can you please let Shep know how someone from the media might attend tomorrow's demo?

Shep, Mary Ellen will be on-site to conduct any interviews.

Thanks!

Allison

**From:** shepard doniger [mailto:[sdoniger@bdcginc.com](mailto:sdoniger@bdcginc.com)]  
**Sent:** Monday, May 02, 2011 3:12 PM  
**To:** Allison Tomek  
**Subject:** RE: Final release

Allison,

I have some initial interest from the Tampa Fox affiliate's health and medical reporter in possibly going by the booth tomorrow. Do we need to do anything to help get him into the event? Do we have a PSID spokesperson on the ground to handle this if he does a story as I do not want to let the VGO people do this alone as we will get diminished in the story.

Shep

---

**From:** Allison Tomek [mailto:[atomek@positiveidcorp.com](mailto:atomek@positiveidcorp.com)]  
**Sent:** Monday, May 02, 2011 8:51 AM  
**To:** shepard doniger ([sdoniger@bdcginc.com](mailto:sdoniger@bdcginc.com))  
**Subject:** FW: Final release

FYI – here is the final press release. I will be sending the contract to you shortly.

Thanks,

Allison

**From:** Allison Tomek  
**Sent:** Sunday, May 01, 2011 6:28 PM  
**To:** Ned Semonite  
**Cc:** Mary Ellen Harrison; 'Jonathan Lai'  
**Subject:** RE: Final release

All,

The attached release will go out at 8:30 am ET tomorrow unless there are any critical changes to be made. We cannot refer to our product as offering real-time monitoring, etc., and cannot call our products operating together a "joint solution" as we prepare for our FDA 510(k). We must be very careful what we say and do not want it to appear that we are changing our system, making health-related claims, etc.

Thanks for your understanding.

Best,

Allison Tomek

Sr. VP of Investor Relations and Corporate Communications

PositiveID Corporation

561-805-8044

---

**From:** Ned Semonite [[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)]  
**Sent:** Sunday, May 01, 2011 4:37 PM  
**To:** Allison Tomek

**Cc:** Mary Ellen Harrison; 'Jonathan Lai'  
**Subject:** Final release

Hi Allison,

Can you send me the final version of the press release? I'd like to see it and we'll want to get it on our website.

Thanks

---

Ned Semonite

VP, Product Management and Marketing

[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)

603-319-4253 (Office Direct)

978-831-3195 (Mobile)

---

**From:** Mary Ellen Harrison  
**Sent:** Tuesday, May 03, 2011 8:10 AM  
**To:** 'CHYE, ELEANOR (ATTCINW)'  
**Subject:** Meeting  
**Attachments:** ATA DemoMay2011.pptx

Eleanor,

Thanks for your email. Just to confirm the reason I declined was that we are at ATA today.

I was rushing to the ATA Conference so did not have a chance to provide any response other than a quick reply. (AT&T has a very nice booth at the event by the way!)

We have integrated our solution with VGo and are demonstrating the power of wireless to transform health care. I thought you might find the attached power point overview of our demo of interest.

I look forward to speaking with you on the 10<sup>th</sup>.

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

---

**From:** shepard doniger <sdoniger@bdcginc.com>  
**Sent:** Wednesday, May 04, 2011 9:07 AM  
**To:** 'Larry Canipe'  
**Cc:** Mary Ellen Harrison; Amanda Tomec  
**Subject:** RE: iglucose at ATA Tampa - Photos and video of the event

Larry,

Thanks for these as they will be helpful for pitching and other uses in the future.

Shep

---

**From:** Larry Canipe [<mailto:larry.canipe@clevatec.com>]  
**Sent:** Tuesday, May 03, 2011 10:29 AM  
**To:** 'shepard doniger'  
**Cc:** 'Mary Ellen Harrison'; 'Amanda Tomec'  
**Subject:** iglucose at ATA Tampa - Photos and video of the event  
**Importance:** High

Hello Shep,

Please find attached some pictures and video links of the PositiveID / iglucose demo with the Vgo tele-presence robot interaction at the American Telemedicine Association (ATA) event in Tampa going on now.

<http://www.youtube.com/watch?v=p7qzFB3nNRM>

Let me know if you need more information.



Larry Canipe  
VP of HealthID  
PositiveID Corporation  
phone 561 322 0246  
mobile 561.664 5279  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

**From:** shepard doniger [<mailto:sdoniger@bdcginc.com>]  
**Sent:** Tuesday, May 03, 2011 8:18 AM  
**To:** 'Mary Ellen Harrison'; 'Larry Canipe'  
**Subject:** RE: Photos of the event

Thank you and please send what you can ASAP. I am calling the assignment desks within the next hour to see if we can get a crew out there and it would be helpful to provide a visual of what they can expect.

Sincerely,

Shep

---

**From:** Mary Ellen Harrison [<mailto:meharrison@positiveidcorp.com>]  
**Sent:** Tuesday, May 03, 2011 8:12 AM  
**To:** Larry Canipe ([larry.canipe@clevatec.com](mailto:larry.canipe@clevatec.com))  
**Cc:** Shepard Doniger ([sdoniger@bdccginc.com](mailto:sdoniger@bdccginc.com))  
**Subject:** Photos of the event

Larry,

I really appreciate all your help yesterday!!!

If you have a minute to send some of the photos of the demo to Shep that would be great. He is doing outreach to journalists.

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

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---

**From:** shepard doniger <sdoniger@bdcginc.com>  
**Sent:** Thursday, May 05, 2011 11:52 AM  
**To:** Mary Ellen Harrison  
**Subject:** RE:

Mary Ellen,

It's unfortunate that she didn't use any of the interview she did with you but not surprised because she had so many options.

I would hope that they'd want to do a piece on diabetes, especially in November for diabetes awareness month. However, now that I have had several conversations with their health and medical producer, I can go back to that well on my own. As a matter of fact, I am going to revisit a specific story about iglucose with him now and see where we might fit in. I will make sure we remain top of mind for anything diabetes they might be doing.

Having said that, we still did make the broadcast and can couch this to anyone we show it to as having been selected as one of the more interesting products at the show which showcased hundreds of different technologies if that would have any value.

Shep

---

**From:** Mary Ellen Harrison [<mailto:meharrison@positiveidcorp.com>]  
**Sent:** Thursday, May 05, 2011 11:41 AM  
**To:** shepard doniger; Allison Tomek  
**Cc:** Amanda Tomec  
**Subject:** RE:

Shep,

Thanks. Yes she certainly cut everything short.

They did get more footage that they did not show. Any chance they will want to repurpose for a segment on diabetes????

[http://www.myfoxtampabay.com/dpp/health/doctor\\_jo/health-care-tools-of-the-future-05042011](http://www.myfoxtampabay.com/dpp/health/doctor_jo/health-care-tools-of-the-future-05042011)

All the best,  
Mary Ellen



Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136  
[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

This e-mail, including any attached files, is intended only for the person to whom or the entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

**From:** shepard doniger [<mailto:sdoniger@bdcginc.com>]  
**Sent:** Thursday, May 05, 2011 10:25 AM  
**To:** Allison Tomek  
**Cc:** Amanda Tomec; Mary Ellen Harrison  
**Subject:**

Allison and Co.,

I just heard from the producer at Fox Tampa Bay and the broadcast from the ATA Show is available at their site. I believe it was Dr. Jo that came by the booth,

While the Vgo robot and iglucose were a part of the segment, neither was mentioned by name and we were not featured or included in any of the interviews that took place. Amanda is seen on camera and they do talk about blood sugar but we did not get specific credit. You will have to judge the true value of this.

I think you guys did all you could to make this work and it may have just been the roll of the dice as to what got more focus in editing versus what didn't.

To improve our chances in the future, we will push for this type of coverage further in advance and hopefully be the initiator of the coverage which will help make us more likely to a featured piece. If it makes sense, I can also be on site to help nudge the reporter further with their reports.

Let me know what you think. Visit [www.myfoxtampabay.com](http://www.myfoxtampabay.com) and look for the health section and the ATA conference under the Dr. Jo section and you will see the broadcast.

Shep

---

**From:** meharrison@positiveidcorp.com  
**Sent:** Friday, April 20, 2012 4:54 PM  
**To:** Elizabeth OConnell; Mary Ellen Harrison; tdorland@positiveidcorp.com  
**Cc:** raymie.mcfarland@mantrahs.com  
**Subject:** RE: Status

Elizabeth,

We can send a unit out for a month trial.

Triana will send this out next week and set up an account for you.

Additionally, I wanted to let you know that iglucose has been nominated for an E-Technology Award. (Please see press release below.) This is a significant in validating our peers opinion of our product.

Thanks  
Mary Ellen

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WASHINGTON, April 19, 2012 -- CNBC's Jon Fortt to Reveal Winners May 9 at International CTIA WIRELESS® 2012

WASHINGTON, April 19, 2012 /PRNewswire-USNewswire/ -- International CTIA WIRELESS® 2012 today announced the Emerging Technology (E-Tech) Awards finalists that represent the industry's most innovative wireless products and services in the areas of mobile apps, consumer electronics, enterprise and vertical markets and network infrastructure.

On Wednesday, May 9 at 2:00 p.m. CDT, Jon Fortt, technology correspondent for CNBC, will make known the E-Tech Awards winners on the Exhibit Innovations Stage at Booth 4575 at International CTIA WIRELESS, taking place May 8-10, 2012 at the Ernest N. Morial Convention Center in New Orleans.

CTIA E-Tech Awards submissions were judged on innovation, functionality, technological importance, implementation and overall "wow" factor. Online judging for the 15 awards categories was conducted by a panel of recognized industry experts, media and analysts.

Attendees are encouraged to take a look at the submissions when they are displayed in Booth 4575 at the Emerging Technology Zone on the tradeshow floor throughout the show. In addition, attendees may vote for their favorite entries online and via text during International CTIA WIRELESS. To vote for the "Best Online Pick," website visitors should vote at [www.ctiashow.com/awards](http://www.ctiashow.com/awards). The entry that earns the most text votes on-site during the show will be named "Best in Show."

The 2012 CTIA E-Tech Awards finalists are (by category in alphabetical order):

Healthcare & Wellness

•ARD400-W 3G Dosimeter and Server Solution, AnyDATA Corporation •AT&T mHealth Solutions presents DiabetesManager®, AT&T and WellDoc •igluco™, PositiveID Corporation •Valencell V-LINC™, Valencell •VGo with integrated Novatel Wireless' Expedite® E362 PCI Express Mini Card for 4G/LTE, Novatel Wireless

## MOBILE CONSUMER ELECTRONICS

### Accessories

•Band, TYLT  
•BURY EasyTouch Pro CV9000, Point to Point Technology USA Inc.  
•Geode by iCache, iCache  
•Motorola ELITE SLIVER Bluetooth® Headset, Motorola Mobility •SmartLinX U250, AirTouch Inc.

### Smartphones & Handsets

•DROID RAZR MAXX by Motorola, Motorola Mobility •Galaxy Nexus by Samsung (Sprint), Samsung Telecommunications America •Galaxy Nexus by Samsung (Verizon), Samsung Telecommunications America •HTC One X, HTC Americas  
•Samsung Galaxy Note™, Samsung Telecommunications America

### Tablets, Netbooks & Embedded Wireless Devices

•ARD400-W 3G Dosimeter, AnyDATA Corporation •Amber Alert GPS V3 Connected by AT&T, AT&T Emerging Enterprises & Partnerships •PlayStation® Vita 3G/Wi-Fi Connected by AT&T, AT&T Emerging Enterprises & Partnerships  
•Samsung Galaxy Tab™ 7.7, Samsung Telecommunications America •xPrintServer, Lantronix

-----Original Message-----

From: Elizabeth OConnell [<mailto:elizabeth.oconnell@mantrahs.com>]  
Sent: Friday, April 13, 2012 7:17 AM  
To: Mary Ellen Harrison  
Cc: [raymie.mcfarland@mantrahs.com](mailto:raymie.mcfarland@mantrahs.com)  
Subject: Re: Status

Great. Look forward to hearing from you.

Elizabeth

On Apr 12, 2012, at 4:54 PM, Mary Ellen Harrison wrote:

> Elizabeth,  
>  
> Sorry for the delay. I am working on this. Triana is testing a igluco 1 unit. I should know by tomorrow if this works.  
>  
> Thanks  
> Mary Ellen  
>  
> -----Original Message-----  
> From: Elizabeth OConnell [<mailto:bigemomof3@gmail.com>]  
> Sent: Thursday, April 12, 2012 4:39 AM

> To: Elizabeth OConnell  
> Cc: Mary Ellen Harrison; [raymie.mcfarland@mantrahs.com](mailto:raymie.mcfarland@mantrahs.com)  
> Subject: Re: Status  
>  
>  
>  
> Sent from my iPad  
>  
> On Mar 27, 2012, at 7:34 AM, Elizabeth OConnell <[elizabeth.oconnell@mantrahs.com](mailto:elizabeth.oconnell@mantrahs.com)> wrote:  
>  
>> Mary Ellen  
>>  
>> Just wondering where you were in the estimated delivery of the device.  
>>  
>> Thanks  
>>  
>> Elizabeth  
>>  
>> Sent from my iPad

---

**From:** meharrison@positiveidcorp.com  
**Sent:** Friday, April 27, 2012 9:50 AM  
**To:** Traci Hoch  
**Subject:** RE: CTIA E-Tech Finalists;;; iglucose PositiveID  
**Attachments:** PSID New Logo.jpg; iglucoseRG\_RGB.jpg

Traci,

Product Name is iglucose®  
Company Name is: PositiveID Corporation  
Logos are attached.

2 People will attend.

Mary Ellen Harrison and one other will be representing iglucose Enterprise & Vertical Market Solution: Healthcare & Wellness  
Main contact is Mary Ellen Harrison< VP HealthID phone number is 561-317-5136.

Thanks  
Mary Ellen

Mary Ellen Harrison  
VP HealthID  
PositiveID  
T: 561-805-8028  
M: 561-317-5136  
www.iglucose.com

och@waggeneredstrom.com]  
**Sent:** Thursday, April 26, 2012 10:35 PM  
**Subject:** CTIA E-Tech Finalists

Hi- Congratulations, again! If you have not provided the info below already, please send to me as soon as possible.  
THANKS and please let me know if you have any questions.

**Please reply to this email with the following information:**

- Any changes or edits to your product or company name that should be reflected on the ceremony slides
- Approximate # of people attending - we will do our best to reserve seats for all finalists and would like an approximate count of who will be attending
- What product, in what category will you be representing?
- Mobile number of main contact attending.

**From:** Heather Lee [<mailto:HLee@ctia.org>]  
**Sent:** Thursday, April 19, 2012 8:33 AM  
**To:** [awards@ctia.org](mailto:awards@ctia.org)  
**Cc:** Traci Hoch; CTIA - Conventions  
**Subject:**

Dear E-tech Entrants,

I am excited to be the first to congratulate you on being a finalist in the 2012 CTIA Emerging Technology Awards program! A panel of recognized industry experts, media and analysts judged hundreds of submissions—it is quite an achievement to be identified and selected as being among the best in the industry! Congratulations again!

CTIA will be issuing the attached press release and sending out an email announcement later today. Please also find attached a press release template that you may use to announce your finalists status as well as a finalist logo to use in your promotions! If you have any questions about this or PR in general regarding your E-Tech finalist status, please contact Traci Hoch at [thoch@waggeneredstrom.com](mailto:thoch@waggeneredstrom.com) or (631) 647-3413.

**1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> place winners will be announced and awarded during the International CTIA WIRELESS® 2012 event in New Orleans:**

***CTIA 2012 Emerging Technology Awards Ceremony***

Wednesday, May 9

2:00 PM

Exhibit Innovations Stage (booth 4575, inside the new CTIA World)

*Hosted by:*



**Jon Fortt**  
CNBC Technology Correspondent



**Please reply to this email with the following information:**

- Any changes or edits to your product or company name that should be reflected on the ceremony slides
- Approximate # of people attending - we will do our best to reserve seats for all finalists and would like an approximate count of who will be attending
- What product, in what category will you be representing?
- Mobile number of main contact attending.

**The 2012 CTIA E-Tech Awards finalists are *(by category in alphabetical order)*:**

**ENTERPRISE & VERTICAL MARKET SOLUTION**

***General Business***

- Appcelerator Titanium Mobile Platform, Appcelerator
- BoxTone Automated Mobile Application Management (MAM), BoxTone
- DialedIn, DialedIn
- EFI PrintMe Mobile, EFI
- FEEDHENRY MOBILE APPLICATION PLATFORM, FeedHenry

***Green Telecom & Smart Energy Solutions, Apps & Hardware***

- AIRSYS high efficiency HVAC Wall Pack Unit (WPU), Tempest Telecom Solutions LLC

- Consert Virtual Peak Plant Solution with integrated Novatel Wireless Expedite E396 3G PCIe Card, Novatel Wireless
- Mushroom GreenZero Wall Travel Charger, Bracketron
- Nularis LED Energy Auditor, Nularis
- Vodacom mobile broadband site running purely on renewable energies, Nokia Siemens Networks

#### ***Healthcare & Wellness***

- ARD400-W 3G Dosimeter and Server Solution, AnyDATA Corporation
- AT&T mHealth Solutions presents DiabetesManager®, AT&T
- iglucose™, PositiveID Corporation
- Valencell V-LINC™, Valencell
- VGo with integrated Novatel Wireless' Expedite® E362 PCI Express Mini Card for 4G/LTE, Novatel Wireless

#### ***Mobile Marketing & Advertising***

- Accession Mobile Content Sharing (MCS), Metaswitch Networks
- AT&T Messaging Toolkit, AT&T
- Chatterspot, Chatterspot
- Digby Localpoint, Digby
- Urban Airship, Urban Airship

#### ***Transportation & Fleet***

- Instant Locate, Global Results Communications
- IsatData Pro, SkyWave Mobile Communications
- Public Safety Multi-Media Messaging Solution, Infinite Convergence
- QPro 3G, Quake Global
- Sonim XP5520 BOLT, Sonim Technologies

## **INFRASTRUCTURE**

#### ***In-Building Wireless, Wi-Fi & LAN***

- Alcatel-Lucent lightRadio Wi-Fi, Alcatel-Lucent
- Huawei AtomCell, Huawei
- nanoConverge, ip.access
- Self-Optimizing Network (SON), AT&T
- Unified User Access Control Software for Virtual Wireless LAN (vWLAN), ADTRAN, Inc.

#### ***Wide Area Network***

- BelAir2100 LTE/3G/Wi-Fi Metrocell, BelAir Networks
- lightRadio™ Network, Alcatel-Lucent
- Nokia Siemens Networks Flexi Multiradio 10 BTS with 6 Pipes Radio for LTE rollouts, Nokia Siemens Networks
- Nokia Siemens Networks Flexi Zone, Nokia Siemens Networks
- PureWave Quantum LTE, PureWave

## **MOBILE APPLICATIONS**

#### ***Automotive, Safe Driving & Transportation***

- Aha Radio 2.0, Harman International
- AT&T DriveMode, AT&T
- Cobra JoyRide™, Cobra Electronics

- iOnRoad- Augmented Driving, iOnRoad
- Scosche cellCONTROL, Scosche Industries

***Health, Wellness & Fitness***

- AT&T mHealth Solutions presents DiabetesManager®, WellDoc
- Beam Brush, Beam Technologies
- Lifecomm Mobile Personal Emergency Response System, Lifecomm
- Macaw, U.S. Preventive Medicine, Inc. and Qualcomm Life
- OptumizMe, Optum

***Mobile Commerce, Shopping & Rewards***

- Eyeona, Eyeona
- Geode by iCache, iCache
- Neustar Intelligent Cloud, Neustar
- Pay Anywhere, Pay Anywhere
- Viggle, Viggle

***Productivity, Utility & Public Safety***

- CounterPath Bria iPad Edition mobile softphone, CounterPath
- iMap Weather Radio, Weather Decision Technologies
- Scout, Telenav
- SugarSync, Inc., SugarSync, Inc.
- ViBe, Base 2 Applications

***Social, Content, Media & Entertainment***

- Aha Radio 2.0, Harman International
- AT&T U-verse Enabled Apps, AT&T
- Bobsled by T-Mobile, T-Mobile
- Doro Experience®, Doro
- Tangled: Storybook Deluxe, Disney Publishing Worldwide

**MOBILE CONSUMER ELECTRONICS**

***Accessories***

- Band, TYLT
- BURY EasyTouch Pro CV9000, Point to Point Technology USA Inc.
- Geode by iCache, iCache
- Motorola ELITE SLIVER Bluetooth® Headset, Motorola Mobility
- SmartLinX U250, AirTouch Inc.

***Smartphones & Handsets***

- DROID RAZR MAXX by Motorola, Motorola Mobility
- Galaxy Nexus by Samsung (Sprint), Samsung Telecommunications America
- Galaxy Nexus by Samsung (Verizon), Samsung Telecommunications America
- HTC One X, HTC Americas
- Samsung Galaxy Note™, Samsung Telecommunications America

***Tablets, Netbooks & Embedded Wireless Devices***

- ARD400-W 3G Dosimeter, AnyDATA Corporation
- Amber Alert GPS V3 Connected by AT&T, AT&T Emerging Enterprises & Partnerships
- PlayStation® Vita 3G/Wi-Fi Connected by AT&T, AT&T Emerging Enterprises & Partnerships

- Samsung Galaxy Tab™ 7.7, Samsung Telecommunications America
- xPrintServer, Lantronix

Congratulations again! Please feel free to contact me or Traci if you have any questions about promoting your finalist status. Thank you!

Save ink and paper. Print this message only if needed.

**Heather Lee Landers**

*Assistant Vice President, Marketing*



Direct: 202.736.3674 | Wireless: 202.497.9802 | Fax: 202.736.3666

connect to CTIA shows: [LinkedIn](#) [Facebook](#) [Twitter](#) (#CTIAEnA #CTIAw12)

**PositiveID Corporation and VGo Communications to Host Joint Demonstration of Wireless Health Solutions at American Telemedicine Association Conference**

*Robotic telepresence and mobile health monitoring services offer innovative care options to healthcare providers*

TAMPA, FL – May 2, 2011 – PositiveID Corporation (“PositiveID”) (NASDAQ: PSID), a leader in next-generation patient monitoring and diagnostics, and VGo Communications, Inc. (“VGo”), the leading provider of robotic telepresence solutions, announced today that the companies will host a joint demonstration of their innovative wireless health solutions working together at the American Telemedicine Association Annual International Meeting and Exhibition 2011 in Tampa, Florida. The companies will demonstrate PositiveID’s iglucose™ wireless communication device for diabetes management operating in conjunction with VGo’s robotic telepresence to show the ability of wireless technology to transform healthcare through mobile interaction between patients and healthcare providers.

**Demonstration Details**

Demos will take place twice daily on May 2 and 3 at 12:30 pm ET and 2:30 pm ET in PositiveID’s booth (#1340).

The live demonstration will show a student using iglucose in a hypothetical classroom environment. Once the student checks her blood glucose readings, a text message will be sent via iglucose to the “remote school nurse” (in Boston). The student’s low blood sugar reading will prompt the nurse, using a VGo, to check on the student in Tampa. The VGo will travel from its booth (#1040) to booth #1340, all under the control of the nurse in Boston. The nurse will then have a short face-to-face conversation with the student and advise the student of actions to take to stabilize her blood sugar.

**About iglucose**

iglucose uses the power of mobile technology to revolutionize the way individuals with diabetes manage their condition. iglucose wirelessly communicates blood glucose readings from data-capable glucometers to the iglucose database, where they can be shared with family members and health care professionals via email, text message or the database itself. For the 25.8 million Americans with diabetes, iglucose can help revolutionize the way they manage their disease, while reducing costs and providing greater convenience and freedom.

**About VGo**

Through VGo’s robotic telepresence, an individual’s presence is established in a distant location such that they can interact and perform their job in ways not previously possible. VGo allows an individual to see, hear, interact and move around in any remote site, just as if that person were there. VGo is not a videoconferencing/telepresence solution. With a videoconference, two or more people meet through TV monitors or PCs where people on both sides of the call must be sitting there in front the camera. With VGo, a person is completely independent of the people in the remote location. VGo’s remote controlled mobility and physical presence makes it something totally new.

**About VGo Communications, Inc.**

VGo Communications, Inc. develops and markets visual communications solutions for the workplace. VGo’s experienced successful veterans of visual communications and robotics industries are leveraging

the recent trends of widespread wireless high speed networks, lower specialized component costs and the universal acceptance of video as a communications medium to create a new market category called “Robotic Telepresence.”

**About PositiveID Corporation**

PositiveID Corporation develops and markets healthcare and information management products through its diagnostic devices and identification technologies, and its proprietary disease management tools. PositiveID's implantable healthcare devices and external hardware and software products are designed to communicate wirelessly to improve healthcare and the patient's quality of life. For more information on PositiveID, please visit [www.PositiveIDCorp.com](http://www.PositiveIDCorp.com).

*Statements about PositiveID's future expectations, including the ability of iglucose to transform healthcare through mobile interaction between patients and healthcare providers; the ability of iglucose to use the power of mobile technology to revolutionize the way individuals with diabetes manage their condition; the likelihood that iglucose can help revolutionize the way the 25.8 million Americans with diabetes manage their disease while reducing costs and providing greater convenience and freedom; and all other statements in this press release other than historical facts are “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, Section 21E of the Securities Exchange Act of 1934, and as that term is defined in the Private Litigation Reform Act of 1995. Such forward-looking statements involve risks and uncertainties and are subject to change at any time, and PositiveID's actual results could differ materially from expected results. These risks and uncertainties include the Company's ability to successfully commercialize iglucose, as well as certain other risks. Additional information about these and other factors that could affect the Company's business is set forth in the Company's various filings with the Securities and Exchange Commission, including those set forth in the Company's 10-K filed on March 25, 2011, under the caption “Risk Factors.” The Company undertakes no obligation to update or release any revisions to these forward-looking statements to reflect events or circumstances after the date of this statement or to reflect the occurrence of unanticipated events, except as required by law.*

*Media Contact:*

Allison Tomek  
561-805-8000  
[atomek@positiveidcorp.com](mailto:atomek@positiveidcorp.com)

*Business Development Contact:*

Mary Ellen Harrison  
561-805-8028  
[meharrison@positiveidcorp.com](mailto:meharrison@positiveidcorp.com)



**Subject: Exhibit and** Joint Demonstration at ATA

## Background

### **PositiveID:**

PositiveID Corporation, (NASDAQ: PSID) a developer of medical technologies for diabetes management, clinical diagnostics and bio-threat detection. For more information on PositiveID, please visit [www.PositiveIDCorp.com](http://www.PositiveIDCorp.com).

igluce uses mobile technology to revolutionize the way individuals with diabetes manage their condition. By seamlessly communicating data from glucometers to the igluce database, blood glucose readings can be shared real-time with family members and health care professionals. This makes it possible to improve care in a cost-effective manner. igluce completely eliminates the burden of keeping journals and empowers individuals with diabetes to be more engaged in the self-management of their condition.

**Note:** igluce is considered a medical device by the US Food and Drug Administration. As such it requires FDA clearance before it is sold to the general public. PositiveID is in the process of obtaining FDA clearance.

For Di

## igluce Demonstration at ADDE

igluce will demonstrate igluce working with meters from compatible with Johnson & Johnson's One Touch® Ultra Mini®, One Touch® Ultra® 2, One Touch® Ultra®; Abbott FreeStyle Lite®, FreeStyle Freedom Lite®; Bayer's Contour®, Breeze® 2, Contour® TS; and Nipro/Home Diagnostic's TRUEresult®, TRUEtrack®, TRUEread®, TRUEbalance™. The Company is continually adding to this list of supported glucose meters.

## What will be demonstrated?

igluucose is a device that connects to industry leading glucometers and sends data via the GSM network to the web. From this point this information can be shared with family members and health care professionals. In essence this is a mobile monitoring solution. In the same way an vehicle's OnStar system knows important information about the vehicle and can communicate accordingly, igluucose knows the condition of a person with diabetes and can communicate according to that individual's preferences. For the 25.8 million Americans with diabetes the opportunity is to revolutionize the way they manage their disease while both reducing costs and providing greater value. (For more information visit [www.igluucose.com](http://www.igluucose.com) )

Our live demonstration will show a student using igluucose in a "classroom environment" once the student checks their blood glucose readings a text message will be sent to the "remote school nurse" (in Boston). We will simulate a low blood sugar reading which will prompt the Vgo to check on the Student in Tampa. The Vgo will travel from booth 1040 to booth 1340 all under the control of the nurse in Boston. She will then have a short conversation with the student and advise the student of actions to take to stabilize her blood sugar.

This all sounds very futuristic... wireless mobile monitors and virtual school nurses.... However, this solution is possible today. Our scenario is just one of many that are possible using the power of wireless to transform health care as we know it!

### Time Line

**By Monday August 1<sup>st</sup>.**

- Press Release Issued see end of document.
- Graphics for booth ordered
- Set up Demo Accounts

**Tuesday August 2<sup>nd</sup>**

- Collect 28X20 Board and Velcro tape.
- Check Graphics on site
- All cards printed
- Test Demo Accounts
- Pack: All equipment, pc, USB , 3 iglucose units, all meters, extension cord, power cords, mouse,
- Press Kits and 20 copies of press release.
- Print 50 copies of survey

person will receive a text message on their phone when the "student" uses iglucose.

**Wednesday:** Demonstrations at 12:30 and 2:30

**Thursday:** Leave at 2pm

### PSID Both Schedule

Date	Time	PSID Representative Responsible	Phone	Email

<p>Monday May 2nd</p>	<p>Times TBD</p>	<p>Triana Dorland  Larry Canipe  Mary Ellen Harrison  Amanda Tomec</p>	<p>Mobile: 305-962-0594  (561) 654 5279  (561) 317-5136  (704) 654-7645</p>	<p>meharrison@positiveidcorp.com</p>
<p>Tuesday May 3rd</p>		<p>Mary Ellen Harrison  Amanda Tomec</p>	<p>(561) 317-5136  (704) 654-7645</p>	<p>meharrison@positiveidcorp.com  atomec@positiveidcorp.com</p>

## Why is iglucose a valuable solution?

### Diabetes

Over 285 million people in the world have diabetes and that number is expected to double in the next 20 years. (Source: IDF International Diabetes Atlas, 2009). Diabetes is a costly disease. On average in the US the cost to an employer for an employee with diabetes is \$10,000+ more than an employee without diabetes.

- **Diabetes is the leading cause of kidney failure, non-traumatic lower-limb amputations, and new cases of blindness among adults in the United States.**

- **Diabetes is a major cause of heart disease and stroke.**
- **Diabetes is the seventh leading cause of death in the United States.**

A key to treatment is self management: Individuals with diabetes are advised to use a device called a glucometer, or blood glucose meter to test their blood sugar levels. These devices are found in every drugstore and are manufactured by companies such as Bayer, Johnson & Johnson and Roche.

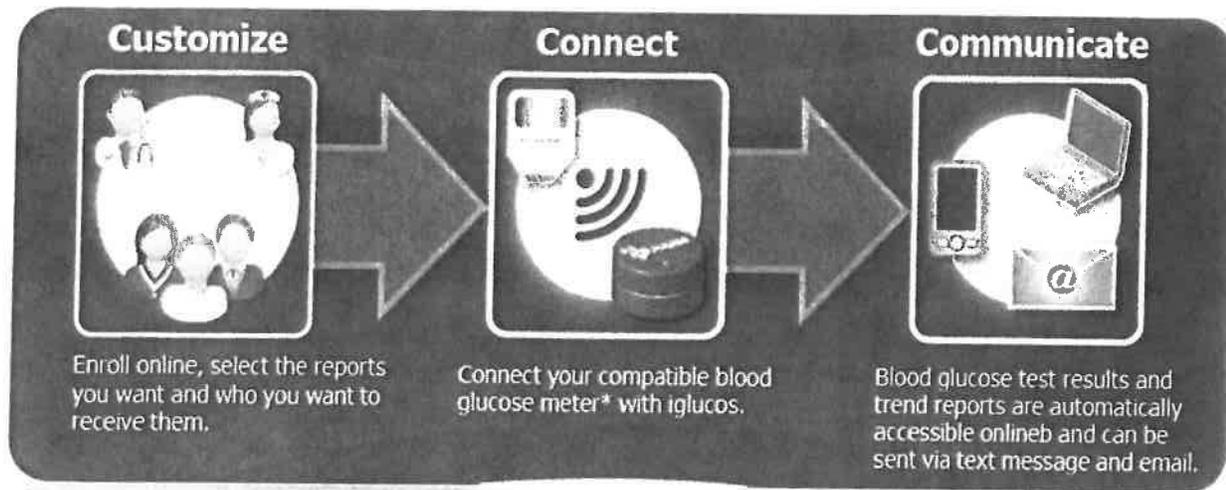
An American Association of Diabetes Educators positioning statement revealed that self-monitoring is the best way for people with diabetes, as well as healthcare professionals, to assess the ongoing efficacy of all aspects of the diabetes management regimen, including medication and patient behavior. The problem is that most people do not have the time to keep journals. iglucose solves this problem by automatically creating logs and trend reports of blood glucose readings and communicating this information, with the user's consent, to family members and healthcare professionals. Because, glucose readings can be shared more frequently, iglucose can play a role in improving care coordination and collaboration as well as aiding in remotely monitoring treatment plans. This product has not been cleared for sale by the United States Food and Drug Administration.

Very simply iglucose connects to industry leading data capable glucometers and uses the Sierra Wireless Module (inside iglucose) to transmit the data that is stored in the glucometer.

## How does iglucose work?

iglucose is designed to simplify reporting for individuals with diabetes. Enrollment online takes less than five minutes and can be done by a healthcare professional or individual. Once enrolled, simply connect iglucose to a compatible, data capable glucometer and iglucose does the rest. Blood glucose readings are automatically communicated wirelessly (via Sierra Wireless GSM Module ) to the secure iglucose database. The web application

automatically creates custom reports and data. Individuals are always in control of choosing who receives their data and how it is communicated.



## Features

**Portable:** Compact size of iglucose makes it ideal for use when away from home.

**Rechargeable Battery:** Once charged iglucose will stay charged for up to one week (length of charge may vary depending on usage).

**Wireless:** iglucose uses the same AT&T GSM network that is accessible to 98% of the U.S. population.

**Indication Lights:** There are two indicator lights, one for data and one for power. This makes it easy to know that the unit has power and is successfully connected to your glucometer and the wireless network.

**Automated Reporting:** Logbooks, trend reports, pie charts and histograms are available on online.

**Multiple Communication Options:** Users may select to have data sent via email, text message or fax.

**Web Portal:** Users and their selected family members, caregivers and healthcare professionals may access data via the web 24/7.

**Ability to Share Data:** Blood glucose data can be tracked by the end user and authorized family members, caregivers or healthcare professionals through our secure, web-based patient portal.

**HIPAA Compliance:** The iglucose device, database and web application are designed to ensure a high level of security and confidentiality, and meet the guidelines set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

## Benefits

**Individuals & Families:** iglucose provides an immediate and reliable means of communicating your blood glucose levels to your family members and caregivers.

## Benefits continued

### Healthcare Professionals

iglucose provides healthcare professionals the next generation of real-time data management. Our integrated solution simplifies the process of tracking daily glucose levels and can also aid in remotely monitoring treatment plans. iglucose allows healthcare professionals to stay connected and informed of a patient's health status.

### Insurance Providers

iglucose is an ideal, convenient and cost-effective remote monitoring solution for individuals with diabetes, healthcare professionals and insurance providers. Our simplified solution facilitates regular monitoring of individuals with diabetes and can aid in identifying the effectiveness of treatment therapies as well as adverse disease stages earlier, potentially reducing medical expenditures within the healthcare system.

### Potential Partners

The iglucose team recognizes the importance of working with strategically aligned organizations to achieve market adoption goals. We are growing our base of distribution channel and technology partners.

## For More Information Contact

Mary Ellen Harrison VP HealthID

Phone 561-805-8028 M: 561-317-5136

Email: [meharrison@positiveidcorp.com](mailto:meharrison@positiveidcorp.com)

Amanda Tomec

## Demo Account Information

### **iglucose 1 Serial Number**

**Username:**

**Password:**

**Glucometers and serial numbers**

### **iglucose 2 Serial Number**

**Username:**

**Password:**

**Glucometers and serial numbers**

### **iglucose 3 Serial Number**

**Username:**

**Password:**

**Glucometers and serial numbers**

Computer Passwords

**Exhibit I Press Release**

**Exhibit II Survey**



**Please provide your feedback!**



- yes**
- no**
- maybe**

**Amanda at the end of the Survey provide a Optional  
Contact me section.**

**With name**

**Phone,**

**Email**

**company**

# The Power of Wireless Technology to Transform HealthCare

---

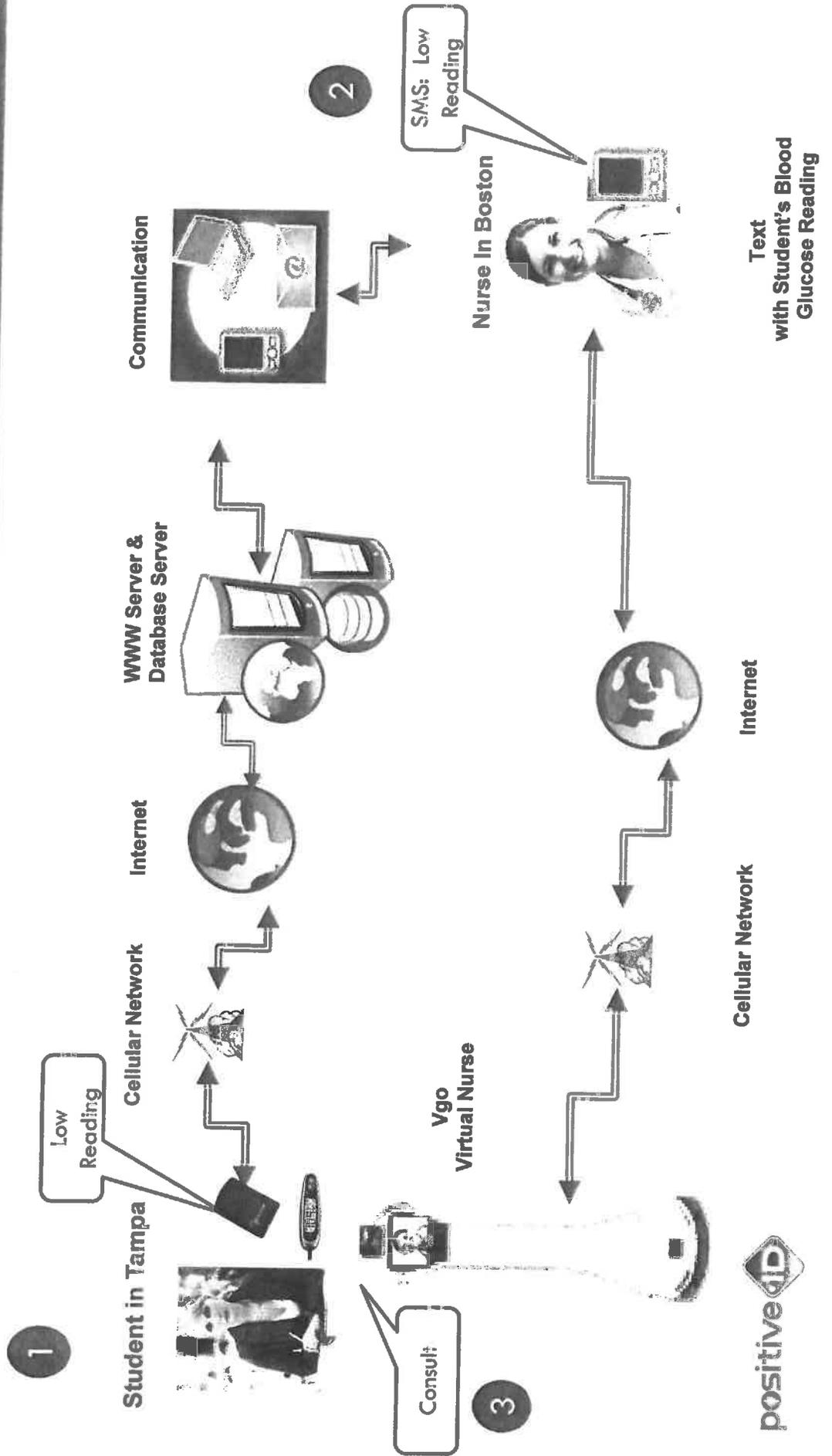
Presented by



&



# Virtual School Nurse



# Possibilities for the Future

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- **The Virtual School Nurse took less than 1 minute to integrate two disparate wireless programs**
- **Both solutions are focused on reducing costs and delivering greater value.....a must for health care reform**
- **Wireless health solutions have the ability to transform healthcare as we know it.....**



**VGO**

**Thank You!**

**Ned Semonite**  
**VP, Product Management and Marketing**

**[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)**  
**603-319-4253 (Office Direct)**



**Thank You!**

**Mary Ellen Harrison  
VP HealthID**

**[meharrison@positiveidcorp.com](mailto:meharrison@positiveidcorp.com)  
**561-805-8028****



**To:** Ned Semonite, VP Product Management and Marketing  
[nsemonite@vgo.com](mailto:nsemonite@vgo.com) (978-81-3195)

**From:** Mary Ellen Harrison, Vice President HealthID  
([meharrison@positiveidcorp.com](mailto:meharrison@positiveidcorp.com), 561-317-5136)

Username: [iglucoseata1@gmail.com](mailto:iglucoseata1@gmail.com)  
Password: positiveid  
Glucometer: Triana's

Username: [iglucoseata2@gmail.com](mailto:iglucoseata2@gmail.com)  
Password: positiveid  
Glucometer: Larry's

At ATA, VGo has a 10x10 booth.

Staffing the VGo booth will be:

Ned Semonite [nsemonite@vgocom.com](mailto:nsemonite@vgocom.com) 978-831-3195

Tom Ryden [tryden@vgocom.com](mailto:tryden@vgocom.com) 617-543-4778

Ashley Wells [awells@vgocom.com](mailto:awells@vgocom.com) 603-801-7645 (iGlucose sends message to this number)

"Nurse Ashley" will physically be in Boston but in the booth via VGo provided 4G is working OK. If 4G is not working OK, she will physically be in the booth and we'll be operating VGos using our self-contained "demo network".

Tom will be at the convention center 1<sup>st</sup> thing on Sunday to setup the booth and the demonstrations (Ned arrives mid-afternoon, Ashley late Sun if flying from Boston). Tom's first order of business will be to setup and test the 4G on the VGo with Ashley in Boston. The plan is to try to do that at about 10am (provided crates are there, etc). Testing will include driving the route between the VGo and PostiveID booths. Next, the VGo demo network will be setup and tested. We will determine if there are any issues with driving the VGo to the PositiveID booth using the demo network (we don't expect any). We will use that if the 4G tests are not successful on Sunday. Note: we may have to fall back to our demo network if we learn that 4G "develops" issues once the conference starts and everybody else at the show is all "lit up".

We look forward to meeting everyone. I'm sure Tom and Larry will connect on Sunday morning.

Mary Ellen, I'll be sending you another email with a few comments.

Best . . . Ned

---

Ned Semonite  
VP, Product Management and Marketing  
[nsemonite@vgocom.com](mailto:nsemonite@vgocom.com)  
603-319-4253 (Office Direct)  
978-831-3195 (Mobile)

**Subject:** Joint Demonstration at ATA

## Background

### **PositiveID:**

PositiveID Corporation, (NASDAQ: PSID) the parent company of the iglucose product, develops and markets healthcare and information management products through its diagnostic devices and identification technologies, and its proprietary disease management tools. PositiveID's products are designed to communicate wirelessly to improve healthcare and the patient's quality of life. For more information on PositiveID, please visit [www.PositiveIDCorp.com](http://www.PositiveIDCorp.com).



iglucose uses mobile technology to revolutionize the way individuals with diabetes manage their condition. By seamlessly communicating data from glucometers to the iglucose database, blood glucose readings can be shared real-time with family members and health care professionals. This makes it possible to improve care in a cost-effective manner. iglucose completely eliminates the burden of keeping journals and empowers individuals with diabetes to be more engaged in the self-management of their condition.

**Note:** iglucose is considered a medical device by the US Food and Drug Administration. As such it requires FDA clearance before it is sold to the general public. PositiveID is in the process of obtaining FDA clearance and anticipates that iglucose will receive this clearance in Q3 of 2011.

## Vgo iglucose Demonstration at ATA

The live demonstration will involve two innovative wireless health solutions working together to provide a view of the future of health care that is possible today.

### What will be demonstrated?

iglucose is a device that connects to industry leading glucometers and sends data via the GSM network to the web. From this point this information can be shared with family members and health care professionals. In essence this is a mobile monitoring solution. In the same way an vehicle's OnStar system knows important information about the vehicle and can communicate accordingly, iglucose knows the condition of a person with diabetes and can communicate according to that individual's preferences. For the 25.8 million Americans with diabetes the opportunity is to revolutionize the way they manage their disease while both reducing costs and providing greater value. (For more information visit [www.iglucose.com](http://www.iglucose.com) )

Vgo enables you to be present and mobile in and throughout a distant location. You can see, hear, talk, interact, and move around just as if you were there. With VGo, you can go anywhere. Vgo is not a videoconferencing/telepresence solution. With a videoconference, two or more people are meeting through TV monitors or PCs where people on both sides of the call must be sitting there in front the camera. With VGo, a person is completely independent of the people in the remote location. You don't make a call – you just go there – your presence is established remotely via Vgo's physical presence. Vgo's remote controlled mobility and physical presence makes it something totally new. ([www.vgocom.com](http://www.vgocom.com))

Our live demonstration will show a student using iglucose in a "classroom environment" once the student checks their blood glucose readings a text message will be sent to the "remote school nurse" (in Boston). We will simulate a low blood sugar reading which will prompt the Vgo to check on the Student in Tampa. The Vgo will travel from booth

1040 to booth 1340 all under the control of the nurse in Boston. She will then have a short conversation with the student and advise the student of actions to take to stabilize her blood sugar.

This all sounds very futuristic... wireless mobile monitors and virtual school nurses..... However, this solution is possible today. Our scenario is just one of many that are possible using the power of wireless to transform health care as we know it!

#### **Actions Required to Demonstrate**

**By Thursday April 28<sup>th</sup>:** Obtain clarification from ATA if we can have the Vgo unit transverse the one aisle for less than 20 seconds two times a day. If the unit cannot transverse the back aisle then the suggestion is to bring iglucose to the Vgo booth for one Demo and bring the Vgo to the iglucose booth for one demo each day. Ok DONE

**By Friday April 29<sup>th</sup>:** Approve Press Release announcing the Demo  
Decide is we want a small card to hand out to promote the demo.

**Sunday:** Larry Canipe will call XXX from Vgo to make sure the system works.  
PSID will input the phone number for the person from Vgo that will be controlling the Vgo unit. This way the person will receive a text message on their phone when the "student" uses iglucose.

**Monday:** Demonstrations at 12:30 and 2:30

**Tuesday:** Demonstrations at 12:30 and 2:30

## PSID Both Schedule

Date	Time	PSID Representative Responsible	Phone	Email
Sunday May 1st	Time TBD	Triana Dorland	Mobile: 305-962-0594	<a href="mailto:tdorland@positiveidcorp.com">tdorland@positiveidcorp.com</a>
	Larry will Call Ned	Larry Canipe	(561) 654 5279	<a href="mailto:lcanipe@clevatec.com">lcanipe@clevatec.com</a>
Monday May 2nd	Times TBD	Triana Dorland	Mobile: 305-962-0594	<a href="mailto:tdorland@positiveidcorp.com">tdorland@positiveidcorp.com</a>
		Larry Canipe	(561) 654 5279	<a href="mailto:lcanipe@clevatec.com">lcanipe@clevatec.com</a>
		Mary Ellen Harrison	(561) 317-5136	<a href="mailto:meharrison@positiveidcorp.com">meharrison@positiveidcorp.com</a>
		Amanda Tomec	(704) 654-7645	<a href="mailto:atomec@positiveidcorp.com">atomec@positiveidcorp.com</a>
Tuesday May 3rd		Mary Ellen Harrison	(561) 317-5136	<a href="mailto:meharrison@positiveidcorp.com">meharrison@positiveidcorp.com</a>
		Amanda Tomec	(704) 654-7645	<a href="mailto:atomec@positiveidcorp.com">atomec@positiveidcorp.com</a>

## Why is iGlucose a valuable solution?

### **Diabetes**

Over 285 million people in the world have diabetes and that number is expected to double in the next 20 years. (Source: IDF International Diabetes Atlas, 2009). Diabetes is a costly disease. On average in the US the cost to an employer for an employee with diabetes is \$10,000+ more than an employee without diabetes.

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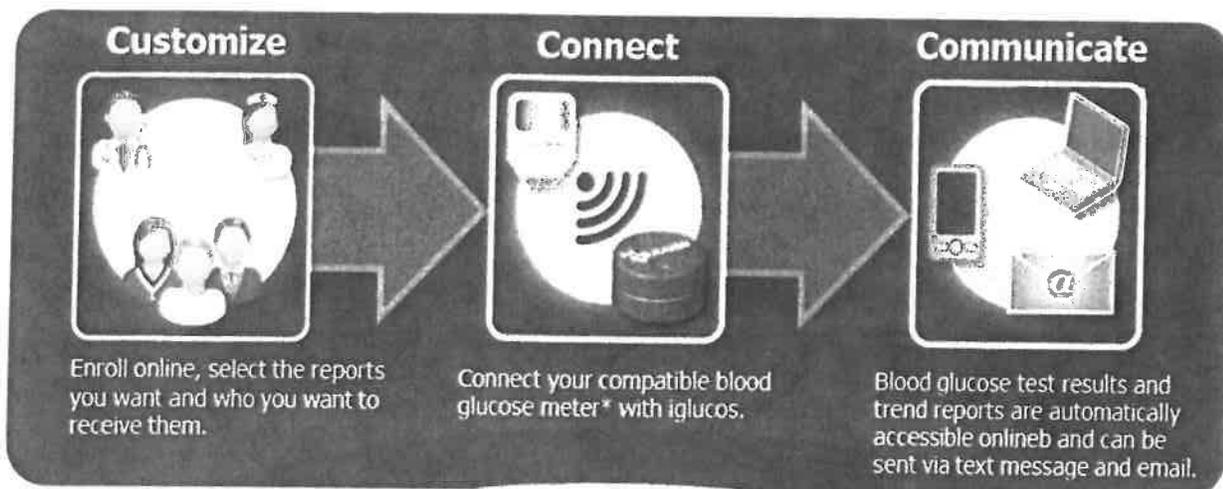
A key to treatment is self management: Individuals with diabetes are advised to use a device called a glucometer, or blood glucose meter to test their blood sugar levels. These devices are found in every drugstore and are manufactured by companies such as Bayer, Johnson & Johnson and Roche.

According to the American Diabetes Association, "Keeping a log of blood glucose results is vital... bringing this record to your healthcare provider, is important in order to have a good picture of your body's response to your diabetes care plan." The Centers for Disease Control reports, "Keeping track of your glucose on a day-to-day basis is one of the best ways you can take charge of your diabetes." The problem is most people don't have the time to keep manual journals.

Very simply iGlucose connects to industry leading data capable glucometers and uses the Sierra Wireless Module (inside iGlucose) to transmit the data that is stored in the glucometer.

## How does iglucose work?

iglucose is designed to simplify reporting for individuals with diabetes. Enrollment online takes less than five minutes and can be done by a healthcare professional or individual. Once enrolled, simply connect iglucose to a compatible, data capable glucometer and iglucose does the rest. Blood glucose readings are automatically communicated wirelessly (via Sierra Wireless GSM Module ) to the secure iglucose database. The web application automatically creates custom reports and data. Individuals are always in control of choosing who receives their data and how it is communicated.



## Features

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### **Potential Partners**

The iglucose team recognizes the importance of working with strategically aligned organizations to achieve market adoption goals. We are growing our base of distribution channel and technology partners.

### **For More Information Contact**

Mary Ellen Harrison VP HealthID

Phone 561-805-8028 M: 561-317-5136

Email: [meharrison@positiveidcorp.com](mailto:meharrison@positiveidcorp.com)

th Care Demostration American Telemedicine Association Event at the Tampa Bay Convention Center-

From: Mary Ellen Harrison  
Sent: Tuesday, April 26, 2011 5:43 PM  
To: 'dbjelland@abcactionnews.com'  
Cc: Amanda Tomec  
Subject: Futuristic Health Care Demostration: American Telemedicine Association  
Event at the Tampa Bay Convention Center- May 2nd and 3rd

Dear David,

As you cover Technology for Action News, I thought you would be interested in a trade show and live demonstration we are planning Monday and Tuesday next week (May 2nd and 3rd).

The event is the American Telemedicine Association's Annual Meeting and Exposition which will be at the Tampa Convention Center. The live demonstration will involve two innovative wireless health solutions working together to provide a view of the future of health care that is available today.

igluose is a device that connects to industry leading glucometers and sends data via the GSM network to the web. From this point this information can be shared with family members and health care professionals. In essence this is a mobile monitoring solution. In the same way an vehicle's OnStar system knows important information about the vehicle and can communicate accordingly, igluose knows the condition of a person with diabetes and can communicate according to that individual's preferences. For the 25.8 million Americans with diabetes the opportunity is to revolutionize the way they manage their disease while both reducing costs and providing greater value. (For more information visit [www.igluose.com](http://www.igluose.com) )

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Our live demonstration will show a student using igluose in a "classroom environment" (Booth 1340) once the student checks their blood glucose readings a text message will be sent to the "remote school nurse" (in Boston). We will simulate a low blood sugar reading which will prompt the Vgo to check on the Student in Tampa. The Vgo will travel from booth 1040 to booth 1340 all under the control of the nurse in Boston. She will then have a short conversation with the student and advise

th Care Demostration American Telemedicine Association Event at the Tampa Bay Convention Center-  
the student of actions to take to stabilize her blood sugar.

This all sounds very futuristic... wireless monitors and remote school nurses....  
However, this solution is  
available today. Our scenario is just one of many that are possible using the power  
of wireless to  
transform health care as we know it today.

We think your viewers would be very interested in seeing this futuristic technology  
that is being  
showcased in their area. We will follow up by phone. In the meantime please do not  
hesitate to contact  
me or Amanda Tomec if you would like more information.

For pre-meeting media registration contact Ben Forstag, ATA Director of  
Communications, at  
bforstag@americantelemed.org On-site registration is also available

All the best,  
Mary Ellen

Mary Ellen Harrison  
VP of HealthID  
PositiveID Corporation  
phone 561.805.8028  
mobile 561.317.5136

[www.PositiveIDcorp.com](http://www.PositiveIDcorp.com)

This e-mail, including any attached files, is intended only for the person to whom  
or the entity to which it is addressed and may  
contain confidential and/or privileged material. Any review, retransmission,  
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in reliance upon, this information by persons or entities other than the intended  
recipient is prohibited. If you received this in error,  
please contact the sender and delete the material from any computer.

# **EXHIBIT 6**

**In The Matter Of:**  
*Valeritas v.*  
*VGo Communications*

---

*VGo Communications by thomas Ryden*  
*June 24, 2013*

---

*Jones Reporting Company*  
*Two Oliver Street, 8th Floor*  
*Boston, MA 02109*

**JonesReporting**  
COMPANY

Original File 0624ryden.txt

Min-L-Script® with Word Index

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1 Volume: I  
 2 Pages: 1-119  
 3 Exhibits: 1-2  
 4 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
 5 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
 6 - - - - - x  
 7 Valeritas, Inc.,  
 8 Petitioner,  
 9 vs.  
 10 VGo Communications, Inc.,  
 11 Respondent.  
 12 - - - - - x  
 13 In the matter of U.S. Reg. No. 3,895,432  
 14 For the Mark: VGO  
 15 Filing Date: March 2, 2010  
 16 Registration Date: December 21, 2010  
 17 Cancellation No. 92054171  
 18 RULE 30(b)(6) DEPOSITION OF VGO COMMUNICATIONS, INC.  
 19 BY ITS DESIGNEE THOMAS RYDEN  
 20 Monday, June 24, 2013 9:29 a.m. to 1:25 p.m.  
 21 Morse, Barnes-Brown & Pendelton, P.C.  
 22 230 Third Avenue, Fourth Floor  
 23 Waltham, Massachusetts  
 24 Reporter: Karen A. Morgan, CSR/RPR

Page 2

1 APPEARANCES:  
 2  
 3 MORSE, BARNES-BROWN & PENDLETON, P.C.  
 4 By Scott J. Connolly, Esquire  
 5 and Sheri S. Mason, Esquire  
 6 CityPoint  
 7 230 Third Avenue, Fourth Floor  
 8 Waltham, Massachusetts 02451  
 9 781-622-5930  
 10 sconolly@mbbp.com  
 11 smason@mbbp.com  
 12 on behalf of the Petitioner.  
 13  
 14 WILMER CUTLER PICKERING HALE AND DORR, LLP  
 15 By Nimit Y. Patel, Esquire  
 16 and Michael J. Bevilacqua, Esquire  
 17 60 State Street  
 18 Boston, Massachusetts 02109  
 19 617-526-6384  
 20 nimit.patel@wilmerhale.com  
 21 michael.bevilacqua@wilmerhale.com  
 22 on behalf of the Respondent.  
 23  
 24

Page 3

1 I N D E X  
 2  
 3 EXAMINATION OF: PAGE  
 4 THOMAS RYDEN  
 5 By Mr. Connolly 4  
 6  
 7  
 8 E X H I B I T S  
 9 NO. PAGE  
 10 Exhibit 1 Binder 13  
 11 Exhibit 2 Page displaying logos 14  
 12  
 13  
 14  
 15 \*Original exhibits retained by Mr. Connolly  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

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1 PROCEEDINGS  
 2 THOMAS RYDEN, having been  
 3 satisfactorily identified by the production of his  
 4 driver's license and duly affirmed that his  
 5 testimony would be the truth, the whole truth and  
 6 nothing but the truth, testified as follows in  
 7 answer to interrogatories by MR. CONNOLLY:  
 8 Q. Good morning. Could you please state your  
 9 name for the record?  
 10 A. Thomas Ryden.  
 11 Q. What is your address, Mr. Ryden?  
 12 A. My personal home address?  
 13 Q. Yes.  
 14 A. 55 River Road in Pepperell, Massachusetts.  
 15 Q. Do you know what this proceeding is today?  
 16 A. In general terms, yes.  
 17 Q. Are you aware that this is the 30(b)(6),  
 18 the Rule 30(b)(6) deposition of VGo Communications,  
 19 Inc.?  
 20 A. Yes.  
 21 Q. And VGo Communications, Inc., is that your  
 22 employer?  
 23 A. Yes.  
 24 Q. And to avoid confusion today I'm going to

Page 13

1 (Exhibit 1 was marked for  
2 identification.)  
3 Q. Mr. Ryden, I'm handing you a binder full  
4 of documents that has been marked as Exhibit No. 1.  
5 A. Okay.  
6 Q. Would you please open it and take a look  
7 at the first page and in the bottom right-hand  
8 corner of the first page do you see where it has the  
9 letters and numbers VGO 000001?  
10 A. Yes.  
11 Q. And can you turn to the last page of the  
12 binder?  
13 A. Yes.  
14 Q. That page is similarly marked as VGO 749.  
15 Do you see that?  
16 A. Yes.  
17 Q. This binder consists of the documents that  
18 your counsel produced to us in discovery and I'm  
19 going to be asking you some questions today about  
20 the documents in here and when I do, I'll refer to  
21 the page numbers by the letters and numbers that I  
22 just called to your attention; okay?  
23 A. I understand.  
24 MR. CONNOLLY: Mark that as Exhibit

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1 2, please.  
2 (Exhibit 2 was marked for  
3 identification.)  
4 Q. Mr. Ryden, could you look at the first  
5 page of Exhibit 1 that's marked VGO number 1?  
6 A. Yes.  
7 Q. And in the upper right-hand corner there  
8 is a logo. Can you tell me what that is?  
9 A. That is our logo.  
10 Q. I'm handing you a document that has been  
11 marked as Exhibit No. 2. Can you take a look at  
12 that, please?  
13 (Witness perused document.)  
14 A. Yes.  
15 Q. Can you tell me what is depicted in the  
16 upper part or the top part of Exhibit No. 2?  
17 A. That's our logo.  
18 Q. And does the logo on the top part of  
19 Exhibit No. 2 depict VCI's trademark as VCI uses it  
20 in commerce on its products?  
21 A. Yes.  
22 Q. Can you tell me what is depicted on the  
23 bottom portion of Exhibit No. 2?  
24 A. No. I mean it's letters and another logo.

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1 Q. Can you describe it for me?  
2 A. Sure. There's the letters V and G and O  
3 with the words disposable insulin delivery and some  
4 kind of thermometer maybe tilted sideways.  
5 Q. Have you ever seen that logo before?  
6 A. Yes.  
7 Q. When have you seen it?  
8 A. In materials that you sent us.  
9 Q. Prior to seeing it in the materials that  
10 were produced by Valeritas in this matter had you  
11 ever seen it before that time?  
12 A. No.  
13 Q. Had anyone at VCI seen it before?  
14 A. Not that I'm aware of.  
15 Q. Turning your attention back to Exhibit  
16 No. 1, the first page in the upper right-hand  
17 corner. You identified that as VCI's logo; correct?  
18 A. Correct.  
19 Q. Can you just tell me in general terms why  
20 does VCI have a logo?  
21 A. We have a logo to identify the company and  
22 our products.  
23 Q. Is it also used for marketing purposes?  
24 A. Yes.

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1 Q. And would you agree that it's used to  
2 distinguish VCI's products in the marketplace?  
3 A. It is used to identify our products, yes.  
4 Q. Who conceived of the logo?  
5 A. Well, I think it was a group effort.  
6 Q. Tell me all the people involved in the  
7 group effort.  
8 A. It was probably Grinnell, Tim, myself,  
9 Ned, Doug Geer. I'm sure there were others who  
10 contributed.  
11 Q. By Tim you're referring to Mr. Root;  
12 correct?  
13 A. Tim Root. Correct.  
14 Q. What was Mr. Grinnell's role in the  
15 conception of the VGo logo?  
16 A. Well, we all gave ideas so I think Doug  
17 designed it and then we suggested changes and things  
18 we liked and things we didn't like.  
19 Q. So my question is what was Mr. Grinnell's  
20 role? Was that your answer as to what Mr. Grinnell  
21 contributed?  
22 A. Mr. Grinnell contributed feedback based on  
23 designs that were shown to us.  
24 Q. Who is Doug Geer?

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1 **A. Couple hundred.**  
2 Q. How about in 2012? How many units did VCI  
3 sell?  
4 **A. A couple hundred.**  
5 Q. Do you know how many units of the robotic  
6 telepresence product VCI has sold in 2013?  
7 **A. Just under a hundred.**  
8 Q. In 2010 did VCI sell products throughout  
9 the United States?  
10 **A. Yes.**  
11 Q. And in 2011 as well?  
12 **A. Yes.**  
13 Q. So is the geographic scope of VCI's sales  
14 the United States?  
15 **A. Yes.**  
16 Q. Does VCI have competitors?  
17 **A. Yes.**  
18 Q. Can you identify some of VCI's  
19 competitors?  
20 **A. Currently iRobot, In Touch, Anybots,**  
21 **Mantero Bots, Suitable Technologies. I think that's**  
22 **it.**  
23 Q. Is VCI's selling point of between six and  
24 \$7,000, is that lower than the products offered by

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1 the other companies?  
2 **A. It's midrange.**  
3 Q. Was it important -- strike that. Did VCI  
4 in designing the product desire to keep the cost  
5 low?  
6 **A. Yes.**  
7 Q. Why did it do that?  
8 **A. We felt there would be a broader appeal in**  
9 **the marketplace for a lower cost product.**  
10 Q. Is health care VCI's largest market?  
11 **A. It is one of its largest markets.**  
12 Q. What are VCI's markets for its products?  
13 **A. So enterprise so corporations, businesses**  
14 **all through office through manufacturing. Education**  
15 **is a large market and health care.**  
16 Q. What percentage of VCI's market consists  
17 of health care?  
18 **A. I would say about a third. I think it's**  
19 **almost a third between those three major market**  
20 **groups.**  
21 Q. Does that change over time?  
22 **A. Education has grown. It used to be**  
23 **smaller and now there's been a lot of publicity**  
24 **around some of our successful uses of the product**

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1 **within school districts and now school districts are**  
2 **buying them quite a bit. So that's picked up. It**  
3 **used to be very small and now it has grown**  
4 **especially this year.**  
5 Q. Is it a true statement that VCI's primary  
6 applications are in education and health care?  
7 **A. No.**  
8 Q. Is that a true statement?  
9 **A. No.**  
10 Q. Is it a true statement that health care is  
11 VCI's largest market?  
12 **A. I think it is a significant market. I**  
13 **think other than education growing this year I think**  
14 **last year it might have been the largest market but**  
15 **it varies.**  
16 Q. Was health care VCI's largest market  
17 earlier this month?  
18 **A. Earlier this month?**  
19 Q. Yes.  
20 **A. No.**  
21 Q. How are VCI's products used by health care  
22 professionals?  
23 **A. They are used in a variety of different**  
24 **manners. Again, the product allows people to be**

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1 **remote so doctors can now make house calls. Doctors**  
2 **can visit other hospitals. Doctors can visit other**  
3 **facilities but some hospitals are using it to allow**  
4 **patient's family members to visit them within the**  
5 **hospital. So it can be used inside within a**  
6 **hospital or can be deployed outside a hospital in**  
7 **rural clinics. So a variety of uses.**  
8 Q. Who is Eugene Spiritus?  
9 **A. He is a doctor out of I believe U. C.**  
10 **Irvine who has been a consultant and now most**  
11 **recently has become our chief medical officer.**  
12 Q. Why does VCI have a chief medical officer?  
13 **A. So that we can better understand that**  
14 **marketplace.**  
15 Q. What is Mr. Spiritus's or Dr. Spiritus's  
16 function at VCI?  
17 **A. To inform us of potential uses within the**  
18 **health area market.**  
19 Q. Do you know what Dr. Spiritus's background  
20 and training is, in what medical field?  
21 **A. I do not.**  
22 Q. Are any of VCI's products currently used  
23 to treat patients with diabetes?  
24 **A. The product doesn't treat the patients.**

# **EXHIBIT 7**



## Quick Links

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## PositiveID Corporation and VGo Communications Host Joint Demonstration of Wireless Health Solutions at ATA

TAMPA, FL – May 2, 2011 – PositiveID Corporation ("PositiveID") (NASDAQ: PSID), a leader in next-generation patient monitoring and diagnostics, and VGo Communications, Inc. ("VGo"), the leading provider of robotic telepresence solutions, announced today that the companies will host a joint demonstration of their innovative wireless health solutions working together at the American Telemedicine Association Annual International Meeting and Exhibition 2011 in Tampa, Florida. The companies will demonstrate PositiveID's Iglucose™ wireless communication device for diabetes management operating in conjunction with VGo's robotic telepresence to show the ability of wireless technology to transform healthcare through mobile interaction between patients and healthcare providers.

### Demonstration Details

Demos will take place twice daily on May 2 and 3 at 12:30 pm ET and 2:30 pm ET in PositiveID's booth (#1340). The live demonstration will show a student using Iglucose in a hypothetical classroom environment. Once the student checks her blood glucose readings, a text message will be sent via Iglucose to the "remote school nurse" (in Boston). The student's low blood sugar reading will prompt the nurse, using a VGo, to check on the student in Tampa. The VGo will travel from its booth (#1040) to booth #1340, all under the control of the nurse in Boston. The nurse will then have a short face-to-face conversation with the student and advise the student of actions to take to stabilize her blood sugar.

### About Iglucose

Iglucose uses the power of mobile technology to revolutionize the way individuals with diabetes manage their condition. Iglucose wirelessly communicates blood glucose readings from data-capable glucometers to the Iglucose database, where they can be shared with family members and health care professionals via email, text message or the database itself. For the 25.8 million Americans with diabetes, Iglucose can help revolutionize the way they manage their disease, while reducing costs and providing greater convenience and freedom.

### About VGo

Through VGo's robotic telepresence, an individual's presence is established in a distant location such that they can interact and perform their job in ways not previously possible. VGo allows an individual to see, hear, interact and move around in any remote site, just as if that person were there. VGo is not a videoconferencing/telepresence solution. With a videoconference, two or more people meet through TV monitors or PCs where people on both sides of the call must be sitting there in front the camera. With VGo, a person is completely independent of the people in the remote location. VGo's remote controlled mobility and physical presence makes it something totally new.

### About VGo Communications, Inc.

VGo Communications, Inc. develops and markets visual communications solutions for the workplace. VGo's experienced successful veterans of visual communications and robotics industries are leveraging the recent trends of widespread wireless high speed networks, lower specialized component costs and the universal acceptance of video as a communications medium to create a new market category called "Robotic Telepresence."

### About PositiveID Corporation

PositiveID Corporation develops and markets healthcare and information management products through its diagnostic devices and identification technologies, and its proprietary disease management tools. PositiveID's implantable healthcare devices and external hardware and software products are designed to communicate wirelessly to improve healthcare and the patient's quality of life. For more information on PositiveID, please visit [www.PositiveIDCorp.com](http://www.PositiveIDCorp.com).

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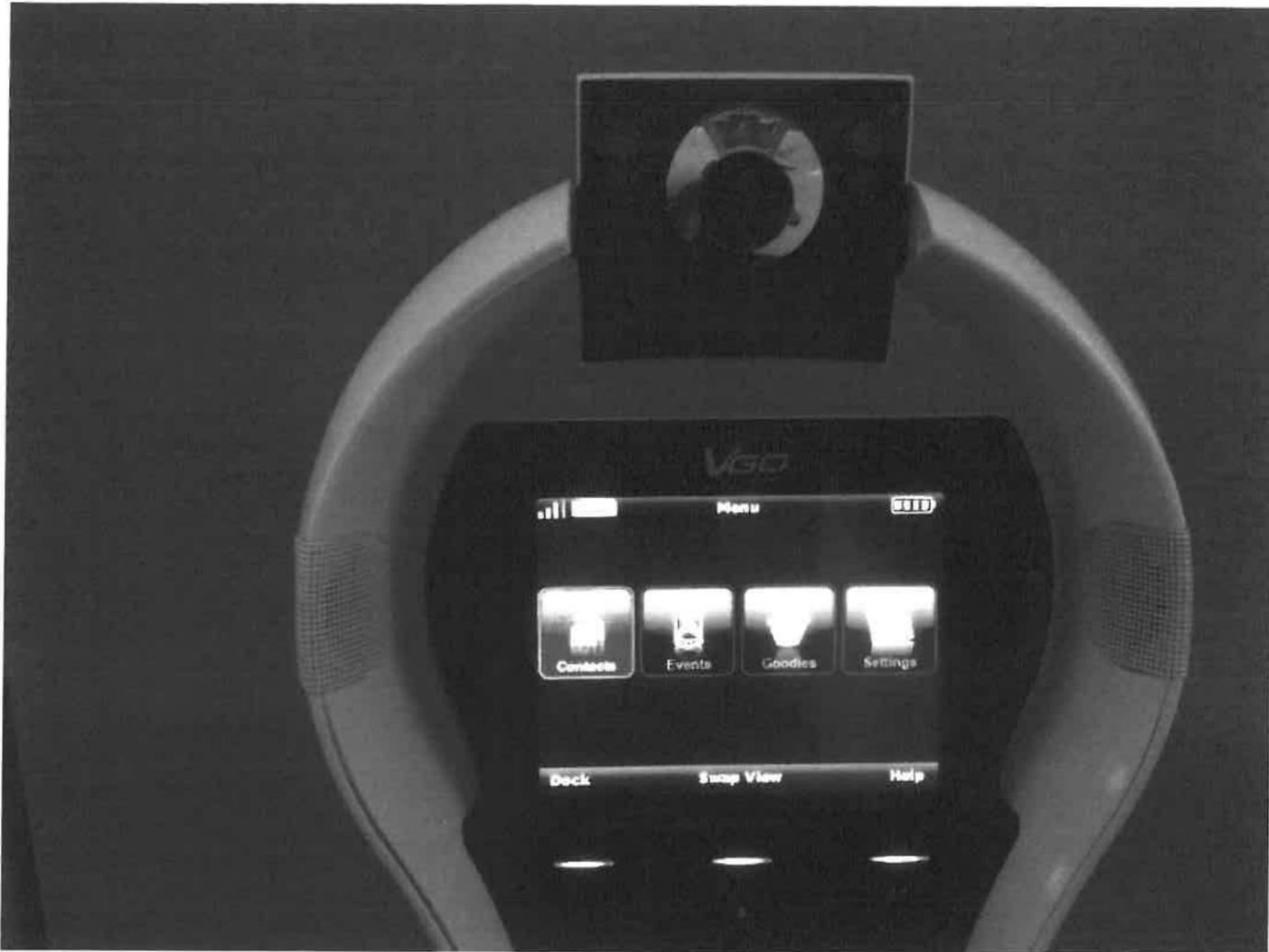
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# **EXHIBIT 8**



VGO



ONLINE

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