UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TELADOC, INC.,
Petitioner

v.

AMERICAN WELL CORPORATION,
Patent Owner

———————————

Case IPR2015-00924
Patent 7,590,550

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**DECLARATION OF SCOTT SILVERMAN IN SUPPORT OF
PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

I, Scott Silverman, declare:

I. INTRODUCTION

1.   My name is Scott Silverman. I am currently the President and Chief Technology Officer, as well as chief software developer, for ThinAir Data Corporation, a telemedicine software company.

2.   I have been retained by Teladoc, Inc. ("Teladoc" or "Petitioner") to provide my expert opinions regarding U.S. Patent No. 7,590,550 ("the '550 Patent," Ex. 1001). More specifically, I have been asked to give my opinion about the meaning of the term "present availability" in relation to Claims 10-11, 23, and 30 of the '550 Patent and the meaning of the term "on-call" in U.S. Patent No. 7,412,396 ("Haq") (Ex. 1002).

3.   I am being compensated for my work in this matter. My compensation in no way depends upon the outcome of this proceeding.

4.   I have been advised by counsel for Teladoc that American Well Corporation ("AmWell" or "Patent Owner"), owner of the '550 Patent, filed a Response to Teladoc's Petition for *Inter Partes* Review in this proceeding in which AmWell argues that the term "presently available" means "currently available," as well as other definitions such as "right now," "immediate," or "on-demand."

5.   I have further been advised by counsel for Teladoc that AmWell's Response relies on a declaration from Ronald S. Weinstein, M.D. (the "Weinstein

Declaration"), in which Dr. Weinstein opines that, in the context of a traditional medical practice and from the perspective of a medical doctor, the term "presently available" means either that "the medical service provider is prepared to pay immediate attention to the case" or that the medical provider is "currently available—set to go," among other definitions.

6.   I have been further advised by counsel for Teladoc that Dr. Weinstein opines in his declaration that, from the perspective of a medical doctor in a traditional medical practice, the term "on-call," which is used in Haq, does not mean presently available.

7.   My opinions stated in this declaration are limited to opinions discussed in American Well's Response and the Weinstein Declaration. Specifically, my opinions stated in this declaration are limited to the meanings of the terms "presently available" and "on-call" as they are used in the '550 Patent and Haq, respectively.

8.   In my opinion, the term "on-call" as it is used in Haq means "presently available" as used in the '550 Patent.

9.   In my opinion, Haq's description of a provider being "on-call" in the context of a "virtual clinic" discloses that the provider is "presently available."

10.   Each statement and/or finding recited herein is based in whole or in part on one or more of the exhibits listed in Section III of this declaration.

II. EXPERT QUALIFICATIONS AND CREDENTIALS

11. My qualifications for presenting the opinions in this declaration are set forth in my curriculum vitae, a copy of which is attached as Appendix A to this declaration.

12. I have more than 25 years of experience as a software architect, developer, and vendor of commercial software in the telemedicine industry.

13. I attended Pomona College from 1982 until 1985 as a National Merit Scholar.

14. In 1990, I founded SkyBail Computing to develop information management software with integrated voice recognition capabilities for the medical and real estate industries. While at SkyBail Computing, I developed the SkyRIS Radiology Information Software (RIS) system. I consider SkyRIS to be the first commercially available RIS to include integrated speech recognition software. SkyRIS included telecommunications integrations to enable Radiologists to remotely interact with referring physicians at disparate hospital locations. SkyRIS also included a scheduler module to enable automated selection and display of medical service providers according to sets of predetermined parameters.

15. In 1996, I founded ThinAir Data Corp. to continue developing information management software for the telemedicine industry. While at ThinAir Data Corp., I developed TeleRIS, a RIS system based on the SkyRIS program

targeted specifically at teleradiology applications. TeleRIS is currently servicing many renowned hospitals, medical systems, and teleradiology companies. Currently, more than 2.6 million radiology reports are processed through the TeleRIS platform servicing over 400 hospitals. TeleRIS includes integrations to many different medical systems through Health Level 7 (HL7) and DICOM interfaces, as well as many custom interfaces which I have developed. I have developed all of the core functionality of TeleRIS, and I continue to develop the software to service ThinAir Data clients.

16. During my more than 25 years at ThinAir Data and SkyBail, I have become proficient at using and programming many different software development technologies, including database platforms such as Microsoft SQL Server and Superbase, and development platforms such as Microsoft ASP.NET, C#, and Visual Basic. I have programmed versions of TeleRIS using each of these technologies.

17. I have successfully programmed and implemented HL7 integrations to nearly every key RIS, PACS, and modality system, including General Electric, Siemens, Epic, Cerner, McKesson, Carestream, Fuji, Meditech, Powerscribe, Accelerad, IBM, Keane, Dictaphone, MedInformatix, IDX, Alife, and more.

18. I routinely interact with other vendors and users of technology in the telemedicine industry through TeleRIS clients, interface development to third-party

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