

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TELADOC HEALTH, INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 21-820 (MN)
v.	)	
	)	
AVAIL MEDSYSTEMS, INC.,	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Teladoc Health, Inc., for its first amended complaint of patent infringement against Defendant Avail Medsystems, Inc., alleges as follows:

**THE PARTIES**

1. Plaintiff Teladoc Health, Inc. (“Teladoc” or “Plaintiff”) is a corporation organized and existing under the laws of the State of Delaware. Teladoc’s principal place of business is Purchase, New York.

2. On information and belief, Defendant Avail Medsystems, Inc. (“Avail” or “Defendant”) is a corporation incorporated in the State of Delaware with its principal place of business in Palo Alto, California.

**NATURE OF ACTION**

3. This is a civil action against Defendant for patent infringement under the United States patent laws, as amended, 35 U.S.C. §§ 101 *et seq.* (the “Patent Laws”). This action arises out of Defendant’s making, using, selling, offering to sell, and/or importing into the United States certain devices covered by Teladoc’s patents and/or inducing or contributing to its customers’ direct infringement. Accordingly, Teladoc seeks monetary and injunctive relief under the Patent Laws.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Avail is incorporated in the state of Delaware, and conducts business and has committed a tort in this District, including without limitation Defendant's patent infringement, which causes harm in this State and in this District. Therefore, this Court has personal jurisdiction over Avail.

6. Venue is proper in this District under 28 U.S.C. § 1400(b) with respect to Avail because, on information and belief, Avail has committed acts of infringement in this District, and is incorporated in the state of Delaware.

## **BACKGROUND**

### **A. The Technology**

7. Teladoc is recognized as the world leader in virtual care and offers the only comprehensive virtual care solution capable of serving organizations and people anywhere.

8. In 2020, Teladoc acquired InTouch Technologies, Inc. ("InTouch"). InTouch provides innovative telehealth capabilities in complex medical environments.

9. InTouch has been recognized as a market-leading telehealth company, receiving recognition for Innovations in Healthcare Technology by the Institute of Electrical and Electronics Engineers (IEEE) Educational Activities Board in 2017 and the President's Innovation in Remote Health Care from the American Telemedicine Association in 2005. InTouch has also earned awards such as the Deloitte's Technology Fast 500 Award, Inc. Magazine's Inc. 500 Award, and, most recently, Rank #1 for Virtual Care Platforms in 2020 in the KLAS Report.

10. The technology at issue in the asserted patents was developed by Dr. Yulun Wang and his colleagues, while working for InTouch.

11. Dr. Wang is recognized as an expert in the field of virtual medicine by several universities, organizations, and news outlets, including the University of California—Santa Barbara, the National Academy of Engineering, the Today Show, Good Morning America, and CNN.

12. Dr. Wang has also been lauded the “Father of Modern Surgical Robotics” by medical news publication Medgadget.

13. Dr. Wang was the principal inventor of the first FDA-approved surgical robot, AESOP (Automated Endoscopic System for Optimal Positioning), and the ZEUS Robotic Surgical System. The ZEUS Robotic Surgical System was used in the world’s first telesurgery procedure in 2001, and AESOP has been widely used in minimally invasive surgery.

14. Dr. Wang has written over 50 publications and has been an inventor on well over 100 patents.

15. The efforts of InTouch and Dr. Wang have resulted in a portfolio of over 130 patents and patent applications.

16. One of InTouch’s earliest filed patents—U.S. Patent No. 6,925,357 (“the ‘357 Patent”), attached as Exhibit A—exemplifies an innovative robotic system developed by InTouch that included a healthcare robot capable of being controlled by a remote station and included two-way video/audio communication. The ‘357 Patent, which was filed on July 25, 2002, provides extensive details of the structure and function of tele-robotic and remote control systems.

17. Much of InTouch’s patent portfolio builds upon the framework of the tele-robotic systems that originated with the ‘357 Patent. Indeed, when describing their respective systems, U.S. Patent Nos. 8,849,679 (the “‘679 Patent”); 9,160,783 (the “‘783 Patent”); and

10,887,545 (the “‘545 Patent”) (collectively, “the Asserted Patents”) incorporate the ‘357 Patent by reference, in its entirety.

**B. The Asserted Patents**

18. Teladoc is the owner, by assignment, of all rights, title, and interest in and to the Asserted Patents.

19. The Asserted Patents are valid, enforceable, and were duly issued in full compliance with Title 35 of the United States Code.

20. On September 30, 2014, the ‘679 Patent, entitled “Remote Controlled Robot System That Provides Medical Images,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘679 Patent is attached as Exhibit B and incorporated herein.

21. The priority date of the ‘679 Patent is at least as early as November 25, 2008.

22. As of the ‘679 Patent’s priority date, the inventions as claimed were novel, non-obvious, unconventional, and non-routine.

23. The ‘679 Patent was not rejected for ineligible-subject matter under 35 U.S.C. § 101.

24. The ‘679 Patent relates generally to a remote controlled robot system that includes a remote control station, a medical imaging device that captures medical images, and a mobile robot that is controlled by the remote control station, can be communicatively coupled to the medical imaging device, and includes a robot monitor and a robot camera that captures a robot image. *See* ‘679 Patent at Abstract. The remote control station includes a camera that captures a remote station image and a monitor that displays a user interface that can simultaneously display

the robot image captured by the robot camera, the remote station image captured by the remote station camera, and medical images captured by the medical imaging device. *Id.* Exemplary robots of a system according to the ‘679 Patent, and the structural components thereof, are disclosed in the specification and figures of the ‘679 Patent. *See, e.g., id.* at 3:10–39, 4:45–50, Figs. 1–3.

25. The ‘679 Patent recognized that, at the time, tele-robotic systems, provided “[e]xamination of the patient [that] is limited to visual inspection,” but that it “would be desirable if the [tele-robotic] system would also allow other devices to be used to examine and interact with a patient.” *See id.* at 1:29–36; *see also id.* at 4:45–50 (discussing Intouch’s tele-robotic systems and the structure of robotic systems set forth in the ‘357 Patent). As such, an improved tele-robotic system according to the ‘679 Patent transmits robot and medical images to a remote control station so that user at the remote control station can view those images and simultaneously interact, through video conference, with personnel at the site of the robot to move the medical image device to vary the captured medical images. *See id.* at 2:8–16. Therefore, the ‘679 Patent is rooted in and directed to a specific improvement to tele-robotic technology.

26. On October 13, 2015, the ‘783 Patent, entitled “Robot System That Operates Though A Network Firewall,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘783 Patent is attached as Exhibit C and incorporated herein.

27. The priority date of the ‘783 Patent is at least as early as May 9, 2007.

28. As of the priority date, the inventions as claimed were novel, non-obvious, unconventional, and non-routine.

29. The ‘783 Patent was not rejected for ineligible-subject matter under 35 U.S.C. § 101, even though Section 101 was at the forefront of many examiners’ minds at the

time the ‘783 Patent was prosecuted, in view of the Supreme Court’s then-recent in *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014).

30. The ‘783 Patent relates generally to a remote controlled robot system that includes a remote control station that transmits commands through a communication network, a robot that operates in response to the remote control station’s commands, and a communication server that establishes and regulates communications between the control station and the robot. *See* ‘783 Patent at 1:50–57, 4:18–23. Exemplary robots of a system according to the ‘783 Patent, and the structural components thereof, are disclosed in the specification and figures of the ‘783 Patent. *See, e.g., id.* at 4:45–5:2, 7:27–31, Figs. 3–5, 6.

31. The ‘783 Patent identified problems with then-existing tele-robotic systems; specifically that, at the time, “firewall[s] can inhibit remote access to [a] robot through the broadband network.” *Id.* at 1:43–44. For example, the ‘783 Patent explains that “[t]he flow of information between the robot 12 and the control station 16 may be limited by a firewall 50 on the robot side of the system and/or a firewall 51 on the control station side of the system,” and “if the robot 12 is not on the same network as the remote station 16, [control communication] will fail.” *See id.* at 2:61–67, 3:9–11. Therefore, the ‘783 Patent explained that it “would be desirable to provide a system that would allow access to a remote robot that is protected by a local area network firewall.” *Id.* at 1:44–47.

32. To address these architectural problems, the ‘783 Patent discloses a communication server that “provides a conduit to allow communication between a plurality of control stations and a single robot, a single control station and a plurality of robots, or a plurality of control stations with a plurality of robots.” *Id.* at 3:56–59. And pursuant to the communication server’s role in facilitating control communication between control stations and robots, ‘783 Patent explains that

the server regulates control communications between control stations and robots by, for example, limiting control communications to defined time periods or intervals. *Id.* at 4:18–23. In this way, the ‘783 Patent explains that a “remote control station may send a query to the communication server 52 which can then establish communication between the remote station 16 and the robot 12” because “the server knows the last known IP address of robots and control stations.” *Id.* at 3:12–19, 3:31–35. Therefore, the ‘783 Patent is rooted in and directed to a specific improvement to tele-robotic technology.

33. On January 5, 2021, the ‘545 Patent, entitled “Remote Presence System Including A Cart That Supports A Robot Face And An Overhead Camera,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘545 Patent is attached as Exhibit D and incorporated herein.

34. The priority date of the ‘545 Patent is at least as early as March 4, 2010.

35. As of the priority date, the inventions as claimed were novel, non-obvious, unconventional, and non-routine.

36. The ‘545 Patent was not rejected for ineligible-subject matter under 35 U.S.C. § 101, even though Section 101 was at the forefront of many examiners’ minds at the time the ‘545 Patent was prosecuted, in view of the United States Supreme Court’s then-recent *Alice* decision.

37. The ‘545 Patent generally relates to a tele-presence system that includes a cart and a remote station. ‘545 Patent at Abstract. The cart includes a robot face that has a robot monitor, a robot camera, a robot speaker, a robot microphone, and an overhead camera. *Id.* And the remote station includes a station monitor, a station camera, a station speaker and a station

microphone. *Id.* The remote station is coupled to the robot face and the overhead camera and can display video images captured by the robot camera and/or overhead camera. *Id.*

38. The ‘545 Patent identified problems with then-existing tele-presence systems used in operating rooms that included a robot face attached to a boom. *See id.* at 1:33–35. The robot face required regular sterilization, and the boom needed to be installed into the operating room; both of which “add[ed] to the cost and complexity of installing such a system.” *See id.* at 1:35–39.

39. To address these problems, the ‘545 Patent claims an improvement to InTouch’s revolutionary tele-robotic system by including an overhead camera, in addition to a robot camera incorporated in a robot face. *See, e.g., id.* at 5:32–67; *see also id.* at 1:66–2:2, 2:9–17. The ‘545 Patent explains that the “overhead camera can be placed above a sterile field to provide a more advantageous vantage point to view a procedure,” “allow[ing] a physician at the remote station to view the procedure and have a video conference to provide instructions, mentoring, etc. to personnel at the surgical site.” *Id.* at 5:16–21; *see also id.* at 5:10–22.

40. The robots of such systems are disclosed in the specification and figures of the ‘545 Patent and the ‘357 Patent, which is wholly incorporated by reference in the ‘545 Patent. *See, e.g.,* at 2:39–3:20, 3:28–33, Figs. 2–6; *see also* ‘357 Patent at 2:53–5:60, Figs. 2–9). For example, both the robot camera and the overhead camera are connected to active joints that include position sensors providing feedback regarding the cameras’ respective positions, which allow the cameras to be independently panned, tilted, and moved in response to commands provided by the remote station. *See id.* at 2:39–46, 2:58–61, Figs. 3–4; *see also id.* at 3:54–56 (explaining that manipulating video images streamed from either robot or overhead cameras at a remote station may “automatically pan a camera when the cursor is moved out of the displayed field of view”),



5:65–67 (providing sliders at the remote station to “vary the zoom, focus and brightness of a selected camera, respectively”). As such, the ‘545 Patent is directed to a specific improvement to robotic technology.

41. The claims of the Asserted Patents are not drawn to laws of nature, natural phenomenon, or abstract ideas.

42. Even if the systems, methods, and computer-readable media claimed in the Asserted Patents are ubiquitous now (and, as a result, are widely infringed), the specific combination of elements, as recited in the claims, was neither conventional nor routine at the time of invention.

43. The claims of the Asserted Patents overcome deficiencies existing in the art as of the date of invention, and comprise non-conventional approaches that transform the inventions as claimed into substantially more than mere abstract ideas.

44. Further, the claims of the Asserted Patents contain inventive concepts that render the underlying non-abstract aspects patent-eligible.

45. The claims of the Asserted Patents recite systems, methods, and computer-readable media resulting in improved functionality of the claimed systems and represent technological improvements to the operation of tele-robotic systems.

### **C. Accused Products**

46. Avail’s products accused of infringement include the Avail Procedural Telemedicine™ System, Portable Avail Consoles, Avail Network, Avail App, and Avail Portal (collectively, “Accused Products”).

47. According to Avail’s LinkedIn profile (<https://www.linkedin.com/company/avail-medsystems/>), Avail seeks to “connect procedural healthcare professionals regardless of

location” by “separating the requirement of physical presence from the ability to collaborate during a procedure.” This is accomplished using “portable, fully integrated, Avail Consoles [that] allow the treating physician and other local healthcare professionals to see everything the remote user displays in real-time,” while “[r]emote users have the ability to access views from multiple high-definition pan-tilt-zoom cameras and external imaging equipment, split the screens to view inputs side by side, annotate, freeze frames, and more.”

48. According to Avail’s web site (<https://avail.io/technology>), the “Portable Avail Consoles provide live access into procedures” and include an “Adjustable Arm” that “[c]ustomize[s] physical camera placement based on the procedure”; “HD pan-tilt-zoom cameras” with “30x zoom controllable by remote user”; a “32[ inch] High Definition Monitor” with a “[r]eal-time display controlled by remote user”; a “Touchscreen” that “[s]hows approved remote users available to collaborate”; and “External Plug-ins” for “[d]isplaying external medical imaging.”

49. Also according to Avail’s web site (<https://avail.io/technology>), the “Avail System and services are intended to passively display information for remote sharing.” The Accused Products support “[a]nnotat[ation] in realtime for all to see” “over live or paused video” to “communicate something to [a] treating physician.”

50. Furthermore, according to Avail’s web site (<https://avail.io/technology>), a “[u]ser-friendly Remote App facilitates on-the-go collaboration with approved remote network members,” and the “Remote App [is a]ccessible [t]hrough an iPad or [c]omputer.” Via the Remote App, users may “[c]hoose from multiple HD pan-tilt-zoom cameras and external imaging sources.” Moreover, third-parties are instructed to “CONTACT AVAIL FOR LIST OF APPROVED DEVICES.”

51. According to Avail’s website (<https://avail.io/portal-news>), “[w]ith the Avail Portal, medical device representatives, physicians and surgeons can now access procedure rooms, schedule, and communicate directly via the Avail Network anytime – from anywhere to anywhere – through a secure, web-based interface,” and “[t]he Portal accompanies the release of additional System enhancements including upgrades to the high-definition pan-tilt-zoom cameras, enhanced audio, a larger Console monitor and user interface improvements to the Remote App.”

52. On information and belief, Avail has partnered with and provided Accused Products to third-parties, inducing and encouraging infringement of the Asserted Patents.

53. For example, according to Smith+Nephew’s web site (<https://www.smith-nephew.com/news-and-media/media-releases/news/smithnephew-teams-up-with-avail-medsystems-to-help-deliver-remote-procedural-support-observation-and-clinical-education-to-customers/>), Smith+Nephew “announce[d] that it has teamed up with Avail Medsystems (Palo Alto, CA) to provide remote, real-time collaboration services to its customers, directly in the OR.” And “[b]y utilizing the Avail Procedural Telemedicine™ System – a remotely accessible console with an integrated split-screen display, multiple remotely controllable HD pan-tilt-zoom cameras, and an ability to remotely annotate over live video - Smith+Nephew will offer its customers the option of remote procedure support, proctoring and collaboration where space, or other restrictions, are a concern.”

54. Further, according to Smith+Nephew’s web site (<https://www.smith-nephew.com/news-and-media/media-releases/news/smithnephew-teams-up-with-avail-medsystems-to-help-deliver-remote-procedural-support-observation-and-clinical-education-to-customers/>), Avail’s CEO, Daniel Hawkins, stated that: “We’re thrilled that Smith+Nephew is offering Avail’s Procedural Telemedicine solution to complement their highly innovative products. . . .” When

technology can help remove the historic requirement for physical presence in the operating room to collaborate during a procedure, clinical education and access to specialized medical expertise has no boundaries.”

55. On information and belief, Avail provides its customers with documentation containing instructions for configuring and using the Accused Products.

56. On information and belief, Avail provides its customers with documentation containing instructions for using the Portable Avail Consoles with third-party equipment.

57. On information and belief, Avail provides its customers with software for use with the Portable Avail Consoles.

58. On information and belief, Avail provides its customers with software for use with the Avail Network.

59. On information and belief, Avail provides its customers with software for use with the Avail Procedural Telemedicine™ System.

**D. Avail’s Knowledge of the Asserted Patents and Accused Products**

60. On May 25, 2021, counsel for Teladoc sent a letter to Avail and its counsel providing notice of the Asserted Patents (“Notice Letter”). Attached as Exhibit E is a copy of the Notice Letter.

61. In the Notice Letter, Teladoc provided notice to Avail that one or more of the Accused Products infringe the Asserted Patents.

62. Additionally, Teladoc complied with 35 U.S.C. § 287. Teladoc provided Avail with notice of the Asserted Patents in accordance with 35 U.S.C. § 287. For example, Teladoc provided Avail with constructive notice of the Asserted Patents by virtually marking its patent-

practicing products in a substantially consistent and continuous manner. *See* <https://intouchhealth.com/patents/> (“Website”).

63. Teladoc began virtually marking its products using the Website on or about December 19, 2012. Teladoc first included the ’679 and ’783 Patents on the Website in approximately May 2016. At that time, Teladoc marked the Provider Access software with the ’679 Patent and the Vita, RP-7i, Lite, Vantage and VisitOR1 products with the ’783 Patent.

64. In approximately September 2019, Teladoc revised the Website to mark the Vici, Xpress, VisitOR1, Lite, Vantage, RP-71, and Vita products and Solo software with the ’679 Patent and the Solo software with the ’783 Patent.

65. In approximately May 2021, Teladoc updated the Website to mark the Mini product with the ’679 and ’783 Patents and the Vantage and Lite products with the ’545 Patents.

**FIRST CLAIM FOR RELIEF**  
**DIRECT INFRINGEMENT OF THE ‘679 PATENT BY AVAIL**

66. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

67. The Accused Products directly infringe at least claim 1 of the ’679 Patent.

68. A chart illustrating direct infringement of claim 1 of the ’679 Patent by the Accused Products is attached as Exhibit 1 to Teladoc’s Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

69. On information and belief, Avail has had knowledge and notice of the ’679 Patent, as well as its infringement thereof, at least as early as May 2016 based on at least Teladoc’s compliance with 35 U.S.C. § 287.

70. Avail has directly infringed and continues to directly infringe the ’679 Patent under 35 U.S.C. § 271(a) by, among other things, making, using, selling, offering to sell, and/or

importing into the United States one or more of the Accused Products that practice one or more claims of the '679 Patent and/or directing and controlling third-parties to make, use, and/or import into the United States one or more of the Accused Products that practice one or more claims of the '679 Patent.

71. Avail's acts of direct infringement of the '679 Patent herein are being committed with full knowledge of Teladoc's rights in the '679 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted direct infringement of a valid patent since at least May 2016. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**SECOND CLAIM FOR RELIEF**  
**INDUCED INFRINGEMENT OF THE '679 PATENT BY AVAIL**

72. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

73. Avail has induced infringement of at least claim 1 of the '679 Patent.

74. A chart illustrating induced infringement of claim 1 of the '679 Patent by the Accused Products is attached as Exhibit 1 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

75. On information and belief, Avail has had knowledge and notice of the '679 Patent, as well as its infringement thereof, at least as early as May 2016 based on at least Teladoc's compliance with 35 U.S.C. § 287.

76. On information and belief, since at least the time Avail received notice, Avail induced and continues to induce infringement of the '679 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe the '679 Patent, including, but not limited to, Avail's partners, clients, customers, and end

users, whose use of one or more of the Accused Products constitutes direct infringement of at least one claim of the '679 Patent.

77. On information and belief, Avail's actions that aid and abet others, such as its partners, customers, clients, and end users, to infringe include advertising and distributing the Accused Products, providing instruction materials, training, and services regarding the Accused Products, and/or providing software for use with one or more of the Accused Products. On information and belief, Avail has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Avail had actual knowledge of the '679 Patent and knowledge that its acts were inducing infringement of the '679 Patent since at least May 2016.

78. Avail's acts of induced infringement of the '679 Patent herein are being committed with full knowledge of Teladoc's rights in the '679 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted induced infringement of a valid patent since at least May 2016. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**THIRD CLAIM FOR RELIEF**  
**CONTRIBUTORY INFRINGEMENT OF THE '679 PATENT BY AVAIL**

79. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

80. The Accused Products contributorily infringe at least claim 1 of the '679 Patent.

81. A chart illustrating contributory infringement of claim 1 of the '679 Patent by the Accused Products is attached as Exhibit 1 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

82. On information and belief, Avail has had knowledge and notice of the '679 Patent, as well as its infringement thereof, at least as early as May 2016 based on at least Teladoc's compliance with 35 U.S.C. § 287.

83. Avail has and continues to contributorily infringe the '679 Patent under 35 U.S.C. § 271(c). With knowledge of the '679 Patent, Avail has sold, sells, offers to sell, has imported and/or is importing into the United States one or more of the Accused Products to be especially made or adapted for use in an infringement of the '679 Patent. The Accused Products are a material component for use in practicing the '679 Patent and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use. The use of one or more of the Accused Products by Avail's partners, clients, customers, and end users constitutes direct infringement of at least one claim of the '679 Patent.

84. Avail's acts of contributory infringement of the '679 Patent herein are being committed with full knowledge of Teladoc's rights in the '679 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted contributory infringement of a valid patent since at least May 2016. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**FOURTH CLAIM FOR RELIEF**  
**DIRECT INFRINGEMENT OF THE '783 PATENT BY AVAIL**

85. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

86. The Accused Products directly infringe at least claim 1 of the '783 Patent.



87. A chart illustrating direct infringement of claim 1 of the '783 Patent by the Accused Products is attached as Exhibit 2 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

88. On information and belief, Avail has had knowledge and notice of the '783 Patent, as well as its infringement thereof, at least as early as May 2016 based on at least Teladoc's compliance with 35 U.S.C. § 287.

89. Avail has directly infringed and continues to directly infringe the '783 Patent under 35 U.S.C. § 271(a) by, among other things, making, using, selling, offering to sell, and/or importing into the United States one or more of the Accused Products that practice one or more claims of the '783 Patent and/or directing and controlling third-parties to make, use, and/or import into the United States one or more of the Accused Products that practice one or more claims of the '783 Patent.

90. Avail's acts of direct infringement of the '783 Patent herein are being committed with full knowledge of Teladoc's rights in the '783 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted direct infringement of a valid patent since at least May 2016. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**FIFTH CLAIM FOR RELIEF**  
**INDUCED INFRINGEMENT OF THE '783 PATENT BY AVAIL**

91. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

92. Avail has induced infringement of at least claim 1 of the '783 Patent.

93. A chart illustrating induced infringement of claim 1 by the Accused Products is attached as Exhibit 2 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

94. On information and belief, Avail has had knowledge and notice of the '783 Patent, as well as its infringement thereof, at least as early as May 2016 based on at least Teladoc's compliance with 35 U.S.C. § 287.

95. On information and belief, since at least the time Avail received notice, Avail induced and continues to induce infringement of the '783 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe the '783 Patent, including, but not limited to, Avail's partners, clients, customers, and end users, whose use of one or more of the Accused Products constitutes direct infringement of at least one claim of the '783 Patent.

96. On information and belief, Avail's actions that aid and abet others, such as its partners, customers, clients, and end users, to infringe include advertising and distributing the Accused Products, providing instruction materials, training, and services regarding the Accused Products, and/or providing software for use with one or more of the Accused Products. On information and belief, Avail has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Avail had actual knowledge of the '783 Patent and knowledge that its acts were inducing infringement of the '783 Patent since at least May 2016.

97. Avail's acts of induced infringement of the '783 Patent herein are being committed with full knowledge of Teladoc's rights in the '783 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted induced infringement of a valid patent since at least May 2016. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**SIXTH CLAIM FOR RELIEF**  
**CONTRIBUTORY INFRINGEMENT OF THE '783 PATENT BY AVAIL**

98. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

99. The Accused Products contributorily infringe at least claim 1 of the '783 Patent.

100. A chart illustrating contributory infringement of claim 1 of the '783 Patent by the Accused Products is attached as Exhibit 2 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

101. On information and belief, Avail has had knowledge and notice of the '783 Patent, as well as its infringement thereof, at least as early as May 2016 based on at least Teladoc's compliance with 35 U.S.C. § 287.

102. Avail has and continues to contributorily infringe the '783 Patent under 35 U.S.C. § 271(c). With knowledge of the '783 Patent, Avail has sold, sells, offers to sell, has imported and/or is importing into the United States one or more of the Accused Products to be especially made or adapted for use in an infringement of the '783 Patent. The Accused Products are a material component for use in practicing the '783 Patent and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use. The use of one or more of the Accused Products by Avail's partners, clients, customers, and end users constitutes direct infringement of at least one claim of the '783 Patent.

103. Avail's acts of contributory infringement of the '783 Patent herein are being committed with full knowledge of Teladoc's rights in the '783 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted contributory infringement of a valid patent since at least May 2016. Avail's acts constitute willful and deliberate infringement,

entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**SEVENTH CLAIM FOR RELIEF**  
**DIRECT INFRINGEMENT OF THE '545 PATENT BY AVAIL**

104. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

105. The Accused Products directly infringe at least claim 1 of the '545 Patent.

106. A chart illustrating direct infringement of claim 1 by the Accused Products is attached as Exhibit 3 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

107. On information and belief, Avail has had knowledge and notice of the '545 Patent, as well as its infringement thereof, at least as early as May 2021 based on at least Teladoc's compliance with 35 U.S.C. § 287 and the Notice Letter.

108. Avail has directly infringed and continues to directly infringe the '545 Patent under 35 U.S.C. § 271(a) by, among other things, making, using, selling, offering to sell, and/or importing into the United States the Accused Products that practice one or more claims of the '545 Patent and/or directing and controlling third-parties to make, use, and/or import into the United States one or more of the Accused Products that practice one or more claims of the '545 Patent.

109. Avail's acts of direct infringement of the '545 Patent herein are being committed with full knowledge of Teladoc's rights in the '545 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted direct infringement of a valid patent since at least May 2021. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**EIGHTH CLAIM FOR RELIEF**  
**INDUCED INFRINGEMENT OF THE '545 PATENT BY AVAIL**

110. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

111. Avail has induced infringement of at least claim 1 of the '545 Patent.

112. A chart illustrating induced infringement of claim 1 by the Accused Products is attached as Exhibit 3 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein..

113. On information and belief, Avail has had knowledge and notice of the '545 Patent, as well as its infringement thereof, at least as early May 2021 based on at least Teladoc's compliance with 35 U.S.C. § 287 and the Notice Letter.

114. On information and belief, since at least the time Avail received notice, Avail induced and continues to induce infringement of the '545 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe the '545 Patent, including, but not limited to, Avail's partners, clients, customers, and end users, whose use of one or more of the Accused Products constitutes direct infringement of at least one claim of the '545 Patent.

115. On information and belief, Avail's actions that aid and abet others, such as its partners, customers, clients, and end users, to infringe include advertising and distributing the Accused Products, providing instruction materials, training, and services regarding the Accused Products and/or providing software for use with one or more of the Accused Products. On information and belief, Avail has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Avail had actual knowledge of the '545 Patent and knowledge that its acts were inducing infringement of the '545 Patent since at least May 2021.

116. Avail's acts of induced infringement of the '545 Patent herein are being committed with full knowledge of Teladoc's rights in the '545 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted induced infringement of a valid patent since at least May 2021. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

**NINTH CLAIM FOR RELIEF**  
**CONTRIBUTORY INFRINGEMENT OF THE '545 PATENT BY AVAIL**

117. Teladoc incorporates by reference each and every allegation contained in Paragraphs 1–65 above.

118. The Accused Products contributorily infringe at least claim 1 of the '545 Patent.

119. A chart illustrating contributory infringement of claim 1 by the Accused Products is attached as Exhibit 3 to Teladoc's Initial Infringement Contentions, served February 11, 2022, and incorporated by reference herein.

120. On information and belief, Avail has had knowledge and notice of the '545 Patent, as well as its infringement thereof, at least as early as May 2021 based on at least Teladoc's compliance with 35 U.S.C. § 287 and the Notice Letter.

121. Avail has and continues to contributorily infringe the '545 Patent under 35 U.S.C. § 271(c). With knowledge of the '545 Patent, Avail has sold, sells, offers to sell, has imported and/or is importing into the United States one or more of the Accused Products to be especially made or adapted for use in an infringement of the '545 Patent. The Accused Products are a material component for use in practicing the '545 Patent and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use. The use of one or more of the

Accused Products by Avail's partners, clients, customers, and end users constitutes direct infringement of at least one claim of the '545 Patent.

122. Avail's acts of contributory infringement of the '545 Patent herein are being committed with full knowledge of Avail's rights in the '545 Patent. On information and belief, Avail is continuing to act despite knowing that its actions constituted contributory infringement of a valid patent since at least May 2021. Avail's acts constitute willful and deliberate infringement, entitling Teladoc to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

### **DAMAGES AND INJUNCTIVE RELIEF**

123. As a result of Avail's infringement of the Asserted Patents, Teladoc has suffered and will continue to suffer damages. Under 35 U.S.C. § 284, Teladoc is entitled to recover from Avail the damages adequate to compensate for such infringement in an amount to be determined at trial.

124. Avail's acts of infringement have caused and will continue to cause irreparable harm to Teladoc, for which there is no adequate remedy at law, entitling Teladoc to injunctive relief.

### **JURY DEMAND**

125. Teladoc demands a trial by jury on all issues.

### **PRAYER FOR RELIEF**

WHEREFORE, Teladoc prays for the following relief:

- a. A judgment holding that Avail has infringed the Asserted Patents.
- b. That Avail and its affiliates, partners, employees, agents, officers, directors, attorneys, successors, and assigns and all those acting on behalf of or in concert with Avail be permanently enjoined from infringement, inducement

of infringement, and contributory infringement of each of the Asserted Patents;

- c. That Teladoc be awarded damages for Avail's infringement of the Asserted Patents, together with interest (both pre- and post-judgment interest), costs, and disbursements as determined by this Court under 35 U.S.C. § 284, including enhanced damages up to three times the amount of damages found or measured, but in any event no less than a reasonable royalty;
- d. That this action be adjudged an exceptional case and Teladoc be awarded its attorneys' fees in this action pursuant to 35 U.S.C. § 285;
- e. That Teladoc is entitled to reasonable costs, including attorneys' fees and expenses; and
- f. That Teladoc be awarded such other equitable or legal relief as this Court deems just and proper under the circumstances.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Rodger D. Smith II*

OF COUNSEL:

Michael V. Solomita  
Stephen Guzzi  
Dervis Magistre  
NORTON ROSE FULBRIGHT US LLP  
1301 Avenue of the Americas  
New York, NY 10019-6022  
(212) 408-5100

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Rodger D. Smith II (#3778)  
Cameron P. Clark (#6647)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
rsmith@morrisonichols.com  
cclark@morrisonichols.com

Valerie K. Barker  
Catherine Garza  
NORTON ROSE FULBRIGHT US LLP  
98 San Jacinto Blvd., Ste. 1100  
Austin, TX 78701-4255  
(512) 474-5201

*Attorneys for Plaintiff Teladoc Health, Inc.*



Jaime Stark  
NORTON ROSE FULBRIGHT US LLP 1301  
McKinney, Ste. 5100  
Houston, TX 77010-3095  
(713) 651-5151

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