

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

<b>DATREC, LLC,</b>	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No. _____</b>
<b>v.</b>	)	
	)	
<b>AMERICAN WELL CORPORATION</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>Defendant.</b>	)	

**PLAINTIFF’S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

DatRec, LLC (“DatRec”) files this Original Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 8,381,309 (“the ’309 patent”) (referred to as the “Patent-in-Suit”) by American Well Corporation (“AMWELL”).

**I. THE PARTIES**

1. Plaintiff DatRec is a Texas Limited Liability Company with its principal place of business located in Harris County, Texas.

2. On information and belief, AMWELL is a corporation existing under the laws of the State of Delaware, with a regular and established place of business located at 1775 Tysons Blvd, Suites 4103 and 4104, Tysons, VA 22102. On information and belief, AMWELL sells and offers to sell products and services throughout Virginia, including in this judicial district, and introduces products and services that perform infringing methods or processes into the stream of commerce knowing that they would be sold in Virginia and this judicial district. AMWELL, Inc. may be served through its registered agent or wherever they may be found.

## **II. JURISDICTION AND VENUE**

3. This Court has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271.

4. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of Virginia and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Virginia and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Virginia and in this judicial district.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in Virginia, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Virginia and this District.

## **III. INFRINGEMENT**

### **A. Infringement of the '309 Patent**

6. On February 9, 2013, U.S. Patent No. 8,381,309 ("the '309 patent", attached as Exhibit A) entitled "Method and System for Ecure Communication Over a Public Network" was duly and legally issued by the U.S. Patent and Trademark Office. DatRec, LLC owns the '309 patent by assignment.

7. The '309 patent relates to a novel and improved system for secure communication over a public network.

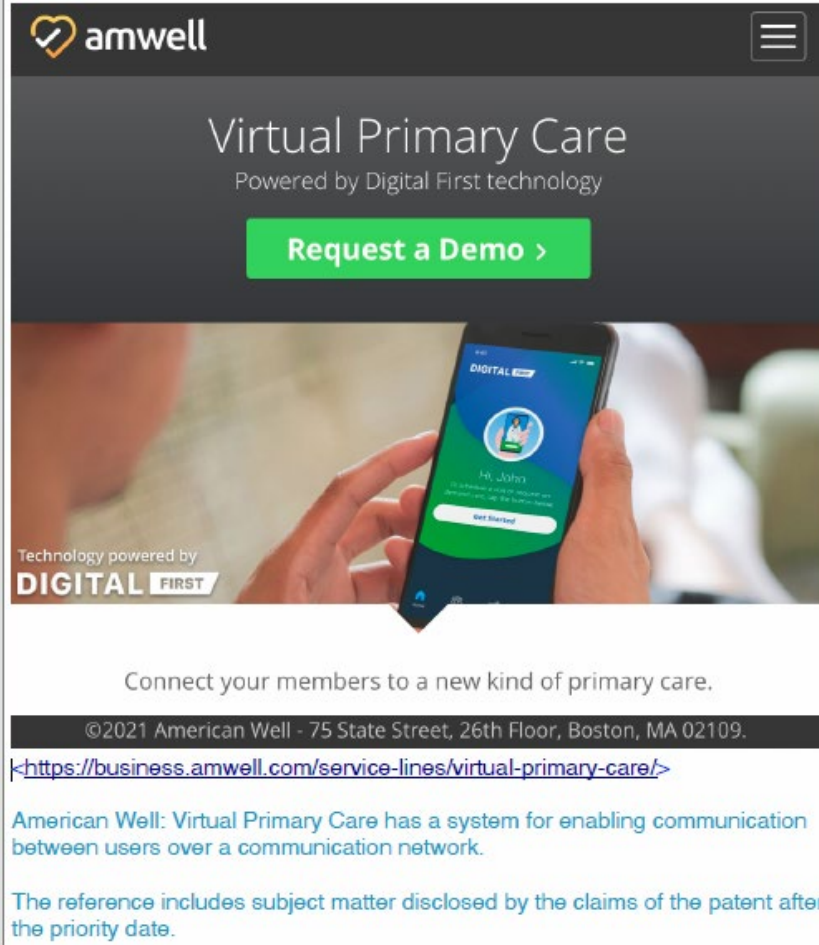
8. AMWELL maintains, operates, and administers electronic health records (“EHR”) through its website at [www.AMWELL.com](http://www.AMWELL.com), and other sources, that infringe one or more claims of the '309 patent, including one or more of claims 1-17, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the '309 Patent into service (i.e., used them); but for Defendant's actions, the claimed-inventions embodiments involving Defendant's products and services would never have been put into service. Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant's procurement of monetary and commercial benefit from it.

9. Support for the allegations of infringement may be found in the following preliminary table:

US8381309 B2

American Well: Virtual Primary Care

9. A system for enabling communication between users over a communication network, the system comprising;



The screenshot displays the American Well Virtual Primary Care website. At the top left is the 'amwell' logo. The main heading is 'Virtual Primary Care' with the subtext 'Powered by Digital First technology'. A prominent green button reads 'Request a Demo >'. Below this is a photograph of a person's hands holding a smartphone. The phone screen shows the app interface with a 'DIGITAL FIRST' logo, a circular profile picture, and the text 'Hi, John' followed by a 'Get Started' button. At the bottom of the phone screen, it says 'Technology powered by DIGITAL FIRST'. Below the phone image, the text reads 'Connect your members to a new kind of primary care.' A dark grey bar contains the copyright notice '©2021 American Well - 75 State Street, 26th Floor, Boston, MA 02109.' Below this is a blue hyperlink: '<https://business.amwell.com/service-lines/virtual-primary-care/>'. The final two paragraphs of text are: 'American Well: Virtual Primary Care has a system for enabling communication between users over a communication network.' and 'The reference includes subject matter disclosed by the claims of the patent after the priority date.'

US8381309 B2	American Well: Virtual Primary Care
<p>a server system associated with a database comprising verified data relating an individual, said server system being configured and operable to verify at least some of the data so as to authenticate an identity of the individual;</p>	<p><b>Q What is Virtual Primary Care?</b></p> <p>Virtual Primary Care offers the digital equivalent to visiting a primary care practice. Delivering a concierge-like experience to your members, Virtual Primary Care facilitates a relationship with a primary care provider and improves care management.</p> <hr/> <p><b>Q How does Virtual Primary Care work?</b></p> <p>Members can choose a provider, schedule a visit, and maintain a relationship with that physician for all future primary care needs. Or, if the matter is urgent, the member can connect to a first-available provider on-demand. In addition, <u>members can receive and refill electronic prescriptions</u>, get specialty referrals, and correspond with their primary care practice, all in one place and from the convenience of their home or office. Our Care Management Team is there to support patients and providers 24/7, ensuring follow-up on patient messages, referrals, lab results and prescriptions.</p> <p><a href="https://business.amwell.com/service-lines/virtual-primary-care/">https://business.amwell.com/service-lines/virtual-primary-care/</a></p> <p>The reference describes a server system associated with a database comprising verified data relating an individual, said server system being configured and operable to verify at least some of the data so as to authenticate an identity of the individual.</p>

US8381309 B2	American Well: Virtual Primary Care
<p>determining a level of reliability in authenticity based on correspondence between data on said individual entered by a plurality of related individuals; and</p>	<p><b>Q What is Virtual Primary Care?</b></p> <p>Virtual Primary Care offers the digital equivalent to visiting a primary care practice. Delivering a concierge-like experience to your members, <u>Virtual Primary Care facilitates a relationship with a primary care provider</u> and improves care management.</p> <hr/> <p><b>Q How does Virtual Primary Care work?</b></p> <p>Members can choose a <u>provider, schedule a visit, and maintain a relationship with that physician for all future primary care needs</u>. Or, if the matter is urgent, the member can connect to a first-available provider on-demand. In addition, members can receive and refill electronic prescriptions, get specialty referrals, and correspond with their primary care practice, all in one place and from the convenience of their home or office. Our Care Management Team is there to support patients and providers 24/7, ensuring follow-up on patient messages, referrals, lab results and prescriptions.</p> <p><a href="https://business.amwell.com/service-lines/virtual-primary-care/">https://business.amwell.com/service-lines/virtual-primary-care/</a></p> <p>The reference describes determining a level of reliability in authenticity based on correspondence between data on said individual entered by a plurality of related individuals.</p>

US8381309 B2	American Well: Virtual Primary Care
<p>the system being configured to define one or more levels of permitted communication between individuals in the database and the verified individual on the basis of said verification.</p>	<p><b>Q</b> <a href="#">What is Virtual Primary Care?</a></p> <p>Virtual Primary Care offers the digital equivalent to visiting a primary care practice. Delivering a concierge-like experience to your members, Virtual Primary Care facilitates a relationship with a primary care provider and improves care management.</p> <hr/> <p><b>Q</b> <a href="#">How does Virtual Primary Care work?</a></p> <p>Members can choose a provider, schedule a visit, and maintain a relationship with that physician for all future primary care needs. Or, if the matter is urgent, <u>the member can connect to a first-available provider on-demand.</u> In addition, <u>members can receive and refill electronic prescriptions, get specialty referrals, and correspond with their primary care practice, all in one place and from the convenience of their home or office.</u> Our Care Management Team is there to support patients and providers 24/7, ensuring follow-up on patient messages, referrals, lab results and prescriptions.</p> <p><a href="https://business.amwell.com/service-lines/virtual-primary-care/">https://business.amwell.com/service-lines/virtual-primary-care/</a></p> <p>The reference describes the system being configured to define one or more levels of permitted communication between individuals in the database and the verified individual on the basis of said verification.</p>

These allegations of infringement are preliminary and are therefore subject to change.

10. AMWELL has and continues to induce infringement. AMWELL has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., EHR) and related services that provide question and answer services across the Internet such as to cause infringement of one or more of claims 1–17 of the '309 patent, literally or under the doctrine of equivalents. Moreover, AMWELL has known of the '309 patent and the technology underlying it from at least the date of issuance of the patent.

11. AMWELL has and continues to contributorily infringe. AMWELL has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., EHR) and related services that provide question and answer services across the Internet such as to cause infringement of one

or more of claims 1–17 of the '309 patent, literally or under the doctrine of equivalents. Moreover, AMWELL has known of the '309 patent and the technology underlying it from at least the date of issuance of the patent.

12. AMWELL has caused and will continue to cause DatRec damage by direct and indirect infringement of (including inducing infringement of) the claims of the '309 patent.

#### **IV. JURY DEMAND**

DatRec hereby requests a trial by jury on issues so triable by right.

#### **V. PRAYER FOR RELIEF**

WHEREFORE, DatRec prays for relief as follows:

- a. enter judgment that Defendant has infringed the claims of the '309 patent;
- b. award DatRec damages in an amount sufficient to compensate it for Defendant's infringement of the '309 patent in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- c. award DatRec an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- d. declare this case to be "exceptional" under 35 U.S.C. § 285 and award DatRec its attorneys' fees, expenses, and costs incurred in this action;
- e. declare Defendant's infringement to be willful and treble the damages, including attorneys' fees, expenses, and costs incurred in this action and an increase in the damage award pursuant to 35 U.S.C. § 284;
- f. a decree addressing future infringement that either (i) awards a permanent injunction enjoining Defendant and its agents, servants, employees, affiliates, divisions, and

subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an amount consistent with the fact that for future infringement the Defendant will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law; and

g. award DatRec such other and further relief as this Court deems just and proper.

Respectfully submitted,  
**KENEALY VAIDYA LLP**  
by Counsel

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