Filed on behalf of ANCESTRY.COM DNA, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANCESTRY.COM DNA, LLC,
Petitioner

FOR INTER PARTES REVIEW OF
U.S. PATENT 8,221,381

DECLARATION OF TERRY N. LAYTON, Ph. D.

ANCESTRY EX. 1003

I, **Terry N. Layton**, declare as follows:

I. INTRODUCTION

A. Terms And Scope Of Engagement

1. Counsel for Ancestry.com DNA, LLC ("AncestryDNA" or "Petitioner") has requested that I provide declaratory evidence in the above captioned Inter Partes Review proceeding ("IPR Engagement"). I understand that this Inter Partes Review proceeding involves U.S. Patent No. 8,221,381 ("the '381 patent") (Ex. 1001).

2. I have also been engaged by the same counsel as an expert witness in a related Inter Partes Review proceeding for the '381 patent, IPR2016-00060 ("first IPR"), and provided a declaration in that proceeding. I have also been engaged on behalf of defendants Spectrum DNA, Spectrum Solutions L.L.C., and Spectrum Packaging L.L.C. (collectively, "Spectrum") in the litigation styled *DNA Genotek, Inc. v. Spectrum DNA; Spectrum Solutions L.L.C., and Spectrum Packaging, LLC*, Case No. 15-cv-00661-SLR (the "*Spectrum* litigation") in which the '381 patent has been asserted to be infringed. I have provided a declaration in support of Spectrum's opposition to DNA Genotek's Motion for Preliminary Injunction in the *Spectrum* litigation (my "litigation declaration"). I enclose a copy of that declaration, with its attached exhibits, as Exhibit 1017.

3. For this IPR Engagement, I have been asked to provide analysis and expert opinions on whether any of claims 3, 6, 9, 10, 13, 14, 18, 19, 39, 40, 43, and 45-47 of the '381 patent, under the claim construction standards that apply during Inter Partes Review, are invalid under 35 U.S.C. § 103 as obvious over specific prior art references.

4. For my work as an expert in this IPR Engagement, I am being compensated at the rate of $250 per hour, except that for my work providing deposition or PTAB trial testimony I am compensated at a rate of $350 per hour. My compensation is not contingent on the opinions I reach or on the outcome of any legal action, mediation, arbitration, or the terms of any settlement in this case.

5. I have been informed by counsel and understand that in contrast to the *Spectrum* litigation, the grounds of unpatentability discussed herein must be based solely on prior patents and other printed publications. I understand that AncestryDNA and Spectrum reserve all rights to assert other grounds for invalidity, not addressed herein, at a later time or in other forums. Thus, absence of discussion of such matters here should not be taken as indicating that there are no such additional grounds for invalidity of the '381 patent.

6. I reserve the right to supplement my opinions to address any information obtained, or positions taken, based on any new information that comes to light throughout this proceeding.

B. Qualifications

7. I studied Electrical Engineering at the University of Illinois at Urbana-Champaign and received a Bachelor of Science degree in Zoology/Physiology from the University of Wyoming in 1966. I earned a M.S. in Bioengineering from the University of Illinois at Chicago in 1972, and a Ph.D. in Biomedical Engineering from the University of Virginia in 1975.

8. I have worked in the medical device field for more than 35 years, and have been actively involved with the engineering, research, product design, development, and manufacturing of medical devices, including FDA regulated medical devices and medical fluid collection devices. A copy of my curriculum vitae is attached as Exhibit 1004.

9. From 1975 to 1988, I was employed by The Kendall Company, starting out as a research scientist, and ultimately being promoted to Manager of Medical & Sports Medicine Divisions. During that time, I designed, tested, developed, and/or managed a variety of products in the dental, medical, and sports fields. Several of these projects involved urine collection devices, lumbar puncture

spinal fluid collection vials, and thoracentesis collection bags and specimen collection tubes and caps.

10. From 1988 to 1990, I was employed by Baxter Healthcare Corporation ("Baxter"), where I was a manager of the Advanced Device Technology group. During that time, I was involved in the design and management of products and components for IV systems and components, and blood collection products.

11. From 1991 to 1994, I was employed by Packer Engineering as its Director of Biomedical Engineering. During that time, I consulted on and made numerous technology assessments of a variety of health related products in the biomedical field and conducted failure mode investigations of medical devices.

12. From 1994 to 1999, I was employed by Integra and the NeuroCare Group as its Vice-President, Group Technical Officer. During this time, I was involved in developing and releasing to the market new products relating to neurosurgical implants and monitoring devices, assessing new technologies, licensing patents, and purchasing patents and companies. I was also involved in developing and releasing to the market medical devices such as cerebral spinal fluid (CSF) collection bags and valves.

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