IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BARDY DIAGNOSTICS, INC., Plaintiff, v. **IRHYTHM TECHNOLOGIES, INC.,** Defendant.	C.A. No. 24-01355-JDW **JOINT RULE 26(f) REPORT**

Following a fulsome discussion, as contemplated by Fed. R. Civ. P. 26(f), Bardy Diagnostics, Inc. ("Bardy") and iRhythm Technologies, Inc. ("iRhythm") (collectively, the "Parties") aver as follows:

I. Counsel

A. Lead Counsel for Bardy: Jeffrey R. Gargano

B. Lead counsel for iRhythm: Melanie L. Mayer[1]

C. All counsel who participated in Rule 26(f) conference on behalf of Bardy:

Jeffrey R. Gargano; Devon C. Beane; Erik J. Halverson; Rebekah Hill; Philip A. Rovner

D. All counsel who participated in Rule 26(f) conference on behalf of iRhythm:

Melanie L. Mayer, Robert E. Counihan, J. David Hadden, Daniel Rabinowitz, Brian P. Egan

II. Description of Claims and Defenses

[1] iRhythm designates Melanie L. Mayer as lead counsel for all pretrial purposes. iRhythm, however, has not yet determined who will act as its lead counsel at trial, including the counsel who will deliver opening and closing statements. Accordingly, iRhythm reserves the right to identify its lead counsel for trial purposes later in the case.

WELCH ALLYN EXHIBIT 2004
iRhythm v. Welch Allyn
IPR2025-00363

A. Bardy's Statement

This is a patent infringement action in which Bardy alleges that iRhythm infringes two patents, and iRhythm alleges that Bardy infringes one patent. In particular, Bardy alleges that iRhythm's Next-Generation Zio Monitor (the "Zio Monitor") infringes at least U.S. Patent Nos. 12,161,473 (the "'473 Patent") (Ex. 1); and 12,171,562 (the "'562 Patent") (Ex. 2) (collectively, the "Bardy Asserted Patents"), both of which are titled "Electrocardiography Patch," and both of which are solely owned by Bardy. The Bardy Asserted Patents generally relate to cardiac monitoring technology. More specifically, the Bardy Asserted Patents claim inventions related to body-worn, or ambulatory, electrocardiography ("ECG") monitors that continuously monitor a patient's electrical heart activity for extended periods of time. Traditional ECG monitoring involved stationary monitoring devices having 12-leads, which required a patient to remain still during use. The Bardy Asserted Patents introduced a novel body-worn ambulatory ECG monitor, enabling physicians and healthcare providers to monitor patients remotely for extended periods more effectively and efficiently. These innovations not only aimed to enhance the quality and quantity of collected data but also to significantly lower the cost of long-term remote monitoring compared to keeping patients in a clinical setting during the monitoring period.

Bardy contends that iRhythm directly infringes the Bardy Asserted Patents, literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing the infringing Zio Monitor in the United States and without authority from Bardy during the terms of each of the Bardy Asserted Patents. In particular, Bardy alleges that iRhythm's Zio Monitor infringes (1) at least claims 1–3, 6, 8, 10, 13, 15, 16, and 19 of the '473 Patent, either literally or under the doctrine of equivalents; and (2) at least claims 8-30 of the '562 Patent, either literally or under the doctrine of equivalents.

Bardy is seeking entry of a judgment that iRhythm infringes the Bardy Asserted Patents; damages in an amount adequate to fully compensate Bardy for iRhythm's infringement of the Bardy Asserted Patents, including prejudgment interest to fully compensate for the time value of money lost due to iRhythm's infringement, and post-judgment interest on all damages and costs awarded, including pre-judgment interest, and accruing at the statutory rate from the date of judgment until full payment is received; and a finding that this case is "exceptional" and an award to Bardy of its costs and reasonable attorney's fees; and such other relief as the Court may deem proper.

On March 3, 2025, iRhythm filed its Answer and Counterclaim (ECF No. 12) alleging that Bardy infringes U.S. Patent No. 12,133,734 (the "'734 patent"). On March 24, 2025, iRhythm filed its First Amended Counterclaims and Answer (ECF No. 19) alleging that Bardy infringes the '734 patent and U.S. Patent Nos. 12,245,859 (the "'859 patent") and 12,245,860 (the "'860 patent") (collectively, the "iRhythm Asserted Patents"). Bardy denies that it infringes any claims of the '734, '859, or the '860 patents (directly or indirectly). Bardy further denies that any such alleged infringement would have been willful. Bardy also contends that the '734, '859, and '860 patents are invalid and/or unenforceable under at least 35 U.S.C. §§ 102, 103, and 112, and/or equitable doctrines. Bardy denies that iRhythm is entitled to any damages, injunctive relief, or any other relief. Bardy reserves its rights to seek recovery of attorneys' fees, costs, and expenses. Bardy reserves its rights to respond to the counterclaim as permitted by Federal Rules of Civil Procedure.

B. iRhythm's Statement

iRhythm is a leading digital health company that provides cutting edge ambulatory cardiac monitoring services that use iRhythm's innovative Zio monitors, which include the Zio XT monitor, Zio AT monitor, and Zio Next-Generation monitor. iRhythm was founded in 2006 and

first received clearance from the U.S. Food and Drug Administration for its technology in 2009—many years before Bardy was founded in 2013 and many years before the earliest possible September 25, 2013 priority date of the Bardy Asserted Patents.

iRhythm has been awarded numerous patents to protect its innovations. Here, iRhythm alleges that Bardy infringes U.S. Patent Nos. 12,133,734 ("734 patent") (Ex. 3), 12,245,859 ("859 patent") (Ex. 4), and 12,245,860 ("860 patent") (Ex. 5), either literally or under the doctrine of equivalents, by making, using, importing, selling, and/or offering to sell the Carnation Ambulatory Monitor Patch ("CAM Patch") in the United States. The 734 patent claims priority to May 12, 2010 and is directed to a novel "electronic device for long-term adhesion to a user." The 859 and 860 patents claim priority to January 24, 2013 and are directed to novel "physiological monitoring device[s] configured to monitor cardiac rhythm data of a patient." iRhythm also intends to amend its counterclaim to assert at least one additional patent that will soon issue and that is also being infringed by Bardy's making, using, selling, importing, and/or offering to sell the CAM Patch—the allowed claims that will issue from U.S. Patent Application No. 18/936,888 (allowed claims attached as Ex. 6) (collectively with the 734, 859 and 860 patents, the "iRhythm Asserted Patents").

Bardy both directly and willfully infringes the 734, 859, and 860 patents. As explained above, Bardy directly infringes the 734, 859, and 860 patents by making, using, selling, importing and/or offering to sell the CAM Patch. iRhythm intends to seek leave to amend its counterclaim in this case to add claims for infringement and willful infringement of the patent that will issue on April 15, 2025 from U.S. Patent Application No. 18/936,888. On February 28, 2025, iRhythm provided notice to Bardy of both the 734 patent and of its infringing activities with respect to the 734 patent. On March 21, 2025, iRhythm provided notice to Bardy of the 859 patent, the 860 patent, and the allowed claims of U.S. Patent Application No. 18/936,888 and of its infringing

activities with respect these patents and allowed claims. Despite notice, Bardy continues to willfully infringe the iRhythm Asserted Patents by making, using, selling, importing and/or offering to sell the CAM Patch in the United States. Accordingly, iRhythm seeks a judgment that Bardy infringes the iRhythm Asserted Patents and that this infringement was willful; damages adequate to fully compensate iRhythm for Bardy's infringement; prejudgment and post-judgment interest; a finding that this case is "exceptional"; an award to iRhythm of its costs and reasonable attorneys' fees; a trebling of damages; and such other relief as the Court may deem proper.

On December 10, 2024, Bardy filed its original complaint in this case alleging that iRhythm infringes U.S. Patent No. 12,161,473 (473 patent). On December 26, 2024, Bardy amended its complaint alleging that iRhythm also infringes U.S. Patent No. 12,171,562 (562 patent). For both the 473 and 562 patents, Bardy accuses iRhythm's Zio Next Generation monitor of infringement. iRhythm denies that the Zio Next Generation Monitor infringes any claims of the 473 or 562 patents. iRhythm further contends that the claims of the 473 and 562 patents are invalid and/or unenforceable under at least 35 U.S.C. §§ 102, 103 and 112 and/or equitable doctrines. Because iRhythm does not infringe the claims of the 473 and 562 patents and because those claims are invalid and unenforceable, Bardy is not entitled to any relief. iRhythm reserves its rights to seek recovery of attorneys' fees, costs and expenses.

II. Anticipated Scope of Discovery

A. Anticipated Discovery

i. Bardy's Statement

The primary issues in this matter for which Bardy bears the burden of proof are infringement of the Bardy Asserted Patents and related damages. To support these claims and establish the amount of damages under 35 U.S.C. § 284, Bardy anticipates that it will need discovery on at least the following factual and legal issues:

- iRhythm's infringement of the Bardy Asserted Patents;
- Damages related to iRhythm's infringement, including discovery of iRhythm's costs, sales volumes, revenues, and profits related to the iRhythm products, systems, and services that infringe the Bardy Asserted Patents;
- Licensing and settlement agreements relevant to Bardy's claim for damages;
- The structure and operation of any products, systems, and services accused of infringing the Bardy Asserted Patents;
- The dates on which iRhythm first made, used, sold, offered for sale, or imported the products, systems, or services accused of infringing the Bardy Asserted Patents;
- The construction of any disputed claim terms of the Bardy Asserted Patents; and
- Whether Bardy is entitled to damages under 35 U.S.C. § 284 and, if so, the amount of any such damages.

To defend against iRhythm's counterclaims for infringement, Bardy anticipates seeking discovery from iRhythm relating to, for example and without limitation, the following factual and legal issues:

- Conception, reduction to practice, and inventorship of the purported inventions claimed in the iRhythm Asserted Patents;
- Prosecution of the iRhythm Asserted Patents;
- Prior art to the iRhythm Asserted Patents; and
- Development, design, operation, marketing, and financials of any product or system that iRhythm asserts embodies the iRhythm Asserted Patents.

ii. <u>iRhythm's Statement</u>

The primary issues in this matter for which iRhythm bears the burden of proof are infringement of the iRhythm Asserted Patents and related damages. To support these claims and establish the amount of damages, including under 35 U.S.C. § 284, iRhythm anticipates that it will need discovery on at least the following factual and legal issues:

- Bardy's infringement of the iRhythm Asserted Patents;

- The design, development, structure, and operation of Bardy's accused product, including any elements recited in the claims of the iRhythm Asserted Patents;

- Damages related to Bardy's infringement, including discovery of Bardy's revenues, expenses, costs, sales volumes, and profits related to Bardy's accused product;

- License agreements and other agreements relevant to iRhythm's damages claim against Bardy;

- Any past or current information related to Bardy's making, using, selling, offering for sale, or importing of the accused product;

- The construction of any disputed claim terms of the iRhythm Asserted Patents;

- Information related to whether iRhythm is entitled to a permanent injunction enjoining and restraining Bardy from infringing the iRhythm Asserted Patents;

- Information related to this being an exceptional case that warrants the awarding of attorney fees to iRhythm; and

- Information related to Bardy's willful infringement of the iRhythm Asserted Patents and trebling of damages.

To defend against Bardy's infringement allegations and the corresponding requested relief, iRhythm will need discovery on at least the following factual and legal issues:

- Conception, reduction to practice, and inventorship of the purported inventions claimed in the Bardy 473 and 562 patents;

- Prosecution of the 473 and 562 patents;

- Prior art to the 473 and 562 patents;

- Development, design, operation, marketing, and financials of any product or system that Bardy asserts embodies the claims of the 473 and 562 patents;

- The conduct of Bardy and its patent counsel in prosecuting the applications that issued as the 473 and 562 patents before the United States Patent and Trademark Office;

- Any license agreements or other agreements relevant to Bardy's alleged damages claim against iRhythm;

- Any analysis conducted by Bardy or at Bardy's request of the value of the 473 and 562 patents;

- The construction of any disputed terms in the 473 and 562 patents;

- Any market share or competitive analysis, including patent infringement analysis or reverse-engineering, performed by Bardy;
- Non-infringing alternatives to the purported inventions claimed in the 473 and 562 patents; and
- Information related to any alleged secondary considerations Bardy contends supports the nonobviousness of the 473 and 562 patents.

B. Anticipated number of interrogatories per Party

The Parties agree that each side should have **thirty-five (35)** interrogatories.

C. Anticipated number of depositions per Party

The Parties propose a limitation on hours for deposition discovery, including that each Party is limited to a total of **one hundred (100) hours** of taking deposition upon oral examination. The Parties further propose to utilize these deposition hours in lieu of FRCP 30(a)(2)(A)(i) and expect to conduct no more than 20 party depositions per side. However, this number of depositions is subject to modification by agreement of the parties or Court order to the extent additional depositions are necessary (e.g., in the event identified witnesses are non-responsive or more than 20 individuals are identified as having relevant information).

D. To the extent either Party proposes to exceed the presumptive limits in the Federal Rules of Civil Procedure for discovery, explain the basis for that proposal

The Parties propose hour limits—rather than limits on the number of depositions—so that the Parties can allocate deposition time as efficiently as possible. This should reduce the incentive to take depositions that are longer than strictly necessary. The Parties are also proposing additional time for depositions because this case involves two separate and distinct sets of patent infringement claims: Bardy has asserted patent infringement claims against iRhythm related to iRhythm's Zio Next Generation monitor and iRhythm has asserted patent infringement claims against Bardy related to Bardy's CAM Patch.

The Parties further propose that each side may serve up to 25 requests for admission. However, there is no limit on the number of requests for admission the Parties may serve to establish the authenticity or admissibility of documents. Requests for admission directed to document authenticity or admissibility shall be clearly denoted as such and shall be served separately from any request for admission subject to the numerical limitations stated above. The Parties seek to limit requests for admission because they believe that such requests are not an effective discovery vehicle in this case; the burden associated with responding to requests for admission outweighs the benefit, given the availability of other discovery mechanisms.

The Parties propose 35 interrogatories instead of the 25 provided for in Federal Rule of Civil Procedure 33 because this case involves two separate and distinct sets of patent infringement claims. Therefore, each party's patent infringement claims involve different asserted patents and different accused products, warranting 10 additional interrogatories.

E. Third-Party Discovery

i. Bardy's Anticipated Third-Party Discovery

Bardy anticipates the need for third-party discovery from at least the following parties for the reasons stated:

- **The Board of Trustees of Leland Stanford Junior University** ("Stanford"): Discovery relating to licensing agreements between iRhythm and Stanford.
- **BioIntelliSense, Inc.** ("BioIntelliSense"): Discovery relating to licensing agreements between iRhythm and BioIntelliSense.
- **Uday N. Kumar** (iRhythm Founder and co-inventor of the iRhythm Asserted Patent): Discovery relating to the design and development of the iRhythm Accused Product; the structure and operation of the iRhythm Accused Product; and the dates on which iRhythm first made, used, sold, offered for sale, or imported the products or systems accused of infringing the Bardy Asserted Patents; conception, diligence, and reduction to practice of the iRhythm Asserted Patent; knowledge of prior art to the iRhythm Asserted Patent; prosecution of the iRhythm Asserted Patent.

- **Peter H. Livingston** (Inventor of the iRhythm Asserted Patent; former iRhythm Engineer): Discovery relating to the conception and reduction to practice of the iRhythm Asserted Patent.

- **Shena Hae Park** (Co-inventor of iRhythm Asserted Patent; former iRhythm Vice President, Product Development): Discovery relating to the conception and reduction to practice of the iRhythm Asserted Patent.

- **William F. Willis** (Co-inventor of the iRhythm Asserted Patent; former President, Chief Executive Officer of iRhythm): Discovery relating to the conception and reduction to practice of the iRhythm Asserted Patent.

- **William H. Righter** (Co-inventor of the iRhythm Asserted Patent; former iRhythm Technical Advisor and Consultant and Director of Product Development): Discovery relating to the conception and reduction to practice of the iRhythm Asserted Patent.

- **David R. Schmidt and possibly additional attorneys involved in the prosecution of the iRhythm Asserted Patents** (Patent counsel who prosecuted the applications that issued as the '734, '859 and '860 patents): Discovery relating to the enforceability of the asserted iRhythm patents.

ii. <u>iRhythm's Anticipated Third-Party Discovery</u>

- **Jason Felix** (Co-inventor of Bardy's 473 and 562 patents): Discovery relating to the conception and reduction to practice of the 473 and 562 patents or any other member of the patent family to which the 473 and 562 patents claim priority; discovery related to any Bardy products that infringe the iRhythm Asserted Patents (including the Bardy CAM Patch) or any Bardy products that embody the claims of the 473 and 562 patents; knowledge of any prior art and the state of the art during the relevant priority dates for the 473 and 562 patents; information related to any competitive analysis conducted by Bardy, including market analysis.

- **Jon Mikalson Bishay** (Co-inventor of Bardy's 473 and 562 patents; former Medical Device Development Consultant at Bardy): Discovery relating to the conception and reduction to practice of the 473 and 562 patents or any other member of the patent family to which the 473 and 562 patents claim priority; discovery related to any Bardy products that infringe the iRhythm Asserted Patents (including the Bardy CAM Patch) or any Bardy products that embody the claims of the 473 and 562 patents; knowledge of any prior art and the state of the art during the relevant priority dates for the 473 and 562 patents; information related to any competitive analysis conducted by Bardy, including market analysis.

- **Gust H. Bardy** (Co-inventor of Bardy's 473 and 562 patents; Founder and former Chief Medical Officer at Bardy): Discovery relating to the conception and reduction to practice of the 473 and 562 patents or any other

member of the patent family to which the 473 and 562 patents claim priority; discovery related to any Bardy products that infringe the iRhythm Asserted Patents (including the Bardy CAM Patch) or any Bardy products that embody the claims of the 473 and 562 patents; knowledge of any prior art and the state of the art during the relevant priority dates for the 473 and 562 patents; information related to the sale of Bardy; information related to any competitive analysis conducted by Bardy, including market analysis.

- **Kevin T. McCormick and possibly additional attorneys involved in the prosecution of the Bardy Asserted Patents** (Patent counsel who prosecuted the applications that issued as the 473 and 562 patents): Discovery relating to inequitable conduct before the United States Patent and Trademark Office during the prosecution of the 473 and 562 patents.

- **Krista Wittman and possibly additional attorneys involved in the prosecution of the Bardy patents to which the Asserted Patents claim priority** (Patent counsel who prosecuted the application that became U.S. Patent No. 11,051,743; both the 473 and 562 patents claim priority to this patent): Discovery relating to inequitable conduct before the United States Patent and Trademark Office in the prosecution of the 473 and 562 patents.

- **Companies with relevant prior art, including prior art systems:** Discovery related to prior art, including any third-party products or systems that are prior art to the 473 and 562 patents under 35 U.S.C §§102, 103.

- **Companies with licensing agreements or other contracts with Bardy related to ECG monitoring services or devices**: Discovery related to any license agreements or other agreements related to ECG monitoring, which are relevant to iRhythm's and Bardy's claims for damages.

F. Experts

i. Bardy's Position

Bardy anticipates that it will need experts to opine on the following subjects:

- iRhythm's infringement of the Bardy Asserted Patents, including claim construction;

- Validity of the Bardy Asserted Patents, including claim construction;

- Damages related to iRhythm's infringement of the Asserted Patents;

- Bardy's purported infringement of the iRhythm Asserted Patent, including claim construction;

- Invalidity of the iRhythm Asserted Patent, including claim construction; and

- Purported damages related to Bardy's purported infringement of the iRhythm Asserted Patent.

ii. iRhythm's Position

iRhythm anticipates that it will need experts to opine on the following subjects:

- Bardy's infringement of the iRhythm Asserted Patents, including claim construction;
- Validity of the iRhythm Asserted Patents, including claim construction;
- Damages related to Bardy's infringement of the iRhythm Asserted Patents;
- iRhythm's purported infringement of Bardy's 473 and 562 patents, including claim construction;
- Invalidity of Bardy's 473 and 562 patents, including claim construction;
- Non-infringing alternatives to the purported inventions claimed in Bardy's 473 and 562 patents; and
- Purported damages related to iRhythm's purported infringement of the 473 and 562 patents.

G. Attorneys' Fees

Bardy intends to seek a declaration that this case is "exceptional" pursuant to 35 U.S.C. § 285, entitling Bardy to an award of reasonable attorneys' fees, expenses, and costs for this action.

iRhythm intends to seek a declaration that this case is "exceptional" pursuant to 35 U.S.C. § 285, entitling iRhythm to an award of reasonable attorneys' fees, expenses, and costs for this action. iRhythm also intends to seek a determination that Bardy's infringement of the iRhythm Asserted Patents was willful and a trebling of damages in this case.

H. Has each Party provided written notice to the client of the obligation to preserve all relevant material, including electronic records?

Bardy: Yes

iRhythm: Yes

III. Status of Discovery

On March 6, 2025, Bardy served its Rule 26(a) Initial Disclosures, its First Set of Requests for Production (Nos. 1–45), and its First Set of Interrogatories (Nos. 1–7) on iRhythm. iRhythm's responses to Bardy's first sets of discovery requests are due on April 7, 2025.

On March 7, 2025, iRhythm served its First Set of Requests for Production (Nos. 1–62), and its First Set of Interrogatories (Nos. 1–6) on Bardy. Bardy's responses to iRhythm's first sets of discovery requests are due on April 7, 2025. iRhythm will serve its Rule 26(a) Initial Disclosures on or before April 2, 2025, as ordered by the Court (D.I. 14).

IV. Proposed Case Management Deadlines

Event	Date
Case Management Conference	April 3, 2025
Deadline to amend pleadings to add claims or Parties	June 2, 2025
Paragraph 3 Disclosures	May 1, 2025
Paragraph 4(a) Disclosures	May 1, 2025
Paragraph 4(b) Disclosures	May 27, 2025
Paragraph 4(c) Disclosures	June 25, 2025
Paragraph 4(d) Disclosures	July 24, 2025
Deadline for Parties to exchange lists of claim terms or phrases that each proposes for construction	August 15, 2025

Deadline for Parties to exchange proposed constructions for all proposed terms or phrases	August 28, 2025
Deadline for Parties to file Joint Claim Construction Chart	September 3, 2025
Deadline for Bardy to serve, but not file, its opening claim construction brief for Bardy Asserted Patents Deadline for iRhythm to serve, but not file, its opening claim construction brief for iRhythm Asserted Patents	September 24, 2025
Deadline for Parties to serve, but not file, their respective answering claim construction briefs	October 22, 2025
Deadline for substantial completion of document production	October 24, 2025
Deadline for Parties to serve, but not file, their respective reply claim construction briefs	November 5, 2025
Deadline for Parties to serve, but not file, their respective sur-reply claim construction briefs	November 19, 2025
Deadline for Parties to file a Joint Claim Construction Brief	November 26, 2025
Date of hearing on claim construction	December 2025, subject to the Court's availability
Final Supplementation of identification of invalidity references	January 15, 2026

Final Infringement Contentions	January 30, 2026
Final Invalidity Contentions	February 27, 2026
Deadline to complete fact depositions	March 31, 2026
Deadline for affirmative expert reports and disclosure of lay witness opinion testimony with related information and documents	May 15, 2026
Deadline for rebuttal expert reports	June 18, 2026
Deadline for reply expert reports	July 10, 2026
Deadline to complete fact and expert discovery	August 15, 2026
Deadline to file motions for summary judgment and Daubert motions	September 11, 2026
Deadline to file oppositions to motions for summary judgment and Daubert motions	October 9, 2026
Deadline to file replies in support of motions for summary judgment and Daubert motions	October 30, 2026
Deadline to file sur replies in support of motions for summary judgment and Daubert motions	November 6, 2026
Hearing on motions for summary judgment and Daubert motions	December 18, 2026, subject to the Court's availability

Final Pretrial Conference	January 15, 2027, subject to the Court's availability
Trial	January 26, 2027, subject to the Court's availability

V. Deposition Scheduling

Have the Parties set aside dates for deposition? __Yes **X** No

If yes, what are those dates? _____

If no, when do the parties intend to confer, and how many dates do they intend to set aside?

The Parties intend to meet and confer by April 17, 2025.

Bardy intends to set aside two weeks of availability to hold open for depositions before the close of fact discovery.

At this time, iRhythm does not know the full scope of depositions it will need to take in this case, including because it is still investigating third party prior art and because Bardy has not yet disclosed its licensing agreements related to ECG monitoring, which are relevant to damages in this case. However, given that Bardy's current Rule 26(a) initial disclosures identify 14 individuals as having relevant knowledge, iRhythm expects there will be a significant number of depositions in this case, which will require more than two weeks for the parties to complete depositions. iRhythm believes the parties will need to set aside at least four weeks for fact depositions.

VI. Electronic Discovery

The Parties have reviewed the Delaware Default Standard for Discovery, Including Discovery of Electronically Stored Information ("ESI") (the "Default Standard") and do not intend to propose any modifications to the Default Standard.

The Parties do not expect any need for cost-shifting or anticipate any problems with electronic discovery.

VII. Protective Orders and Confidentiality Agreements

The Parties anticipate the need for a protective order. Disclosure and discovery activity in this Action will involve the production of information relating to medical grade electrocardiogram ("ECG") monitoring technology including portable wearable ECG monitors, continuous cardiac activity recording, collecting and processing ECG data, detecting cardiac anomalies, transmitting recorded ECG data to healthcare providers, and real-time analysis of ECG data. Certain of this information is likely to involve the production of confidential, proprietary, or private information, for which special protection from public disclosure and from use for any purpose other than prosecuting and defending the Action may be warranted.

The Parties will comply with Judge Wolson's Policies and Procedures concerning Protective Orders and Confidentiality Agreements.

VIII. Alternative Dispute Resolution

A. Settlement Discussions

Prior to the filing of this case, in-house counsel for iRhythm and in-house counsel for Bardy's parent company engaged in settlement discussions independent of outside counsel. There was no agreement reached. Bardy filed its complaint in December 2024.

B. Alternative Dispute Resolution

The Parties have discussed ADR options and agree to engage in private mediation per ADR Local Rule 53.3. The Parties believe it would be most beneficial if ADR occurred after initial discovery, including the exchange of contentions.

C. Identify the individual who will attend the Rule 16 conference who will have authority to discuss settlement.

Plaintiff Jeffrey R. Gargano, Devon C. Beane

Defendant Melanie L. Mayer, Robert E. Counihan, J. David Hadden

IX. Consent to Send Case to a Magistrate Judge

The Parties do not consent to have a United States Magistrate Judge conduct any or all proceedings in this case, pursuant to 28 U.S.C. § 636(c).

X. Service By Electronic Means

Pursuant to Fed. R. Civ. P. 5(b)(2)(E), the Parties agree to service of pleadings and discovery via email, CM/ECF, and as reasonably necessary, other secure methods of electronic file transfer subject to the forthcoming protective order. For calculating all deadlines, electronic service shall be equivalent to hand service. If a method other than electronic service is used, the serving Party shall send a courtesy copy electronically. The Parties further agree that on the date documents are due for service, such documents shall be served on opposing counsel by email no later than 5:00 p.m., local Eastern Time. The Parties also agree to exchange service lists that must be used for electronic service.

Documents served on Bardy should be sent to the following email addresses: Bardy-iRhythm-KLG@klgates.com, provner@potteranderson.com, and amoshos@potteranderson.com.

Documents served on iRhythm should be sent to the following email addresses: iRhythm-Bardy@fenwick.com, began@morrisnichols.com, ccucuzzella@morrisnichols.com.

XI. Policies and Procedures

Judge Wolson's Policies and Procedures are available for the Parties to review on the Court's website. By signing below, counsel for each Party and/or each *pro se* Party represents that he or she has reviewed the Judge's Policies and Procedures and acknowledges the requirements contained therein, including the Policies governing keywords to use when emailing Chambers. The Parties and their counsel further acknowledge by signing below that Judge Wolson will strike pleadings and other submissions that do not comply with his Policies and Procedures.

XII. Other Matters

As explained above, iRhythm intends to amend its counterclaim to assert at least one additional patent that will soon issue and that is also being infringed, as well as willfully infringed, by Bardy's making, using, offering to sell, importing and/or selling the CAM Patch.

There are no other issues that have not been addressed above but require the Court's attention.

POTTER ANDERSON & CORROON LLP

/s/ Philip A. Rovner

Philip A. Rovner (#3215)
Andrew M. Moshos (#6685)
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
amoshos@potteranderson.com

Jeffrey R. Gargano
Devon C. Beane
Melissa M. Haulcomb
Rebekah Hill
K&L GATES LLP
70 W. Madison St., Suite 3300
Chicago, IL 60602
(312) 372-1121

Erik J. Halverson
K&L GATES LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111
(415) 882-8238

Attorneys for Plaintiff
Bardy Diagnostics, Inc.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Lucinda C. Cucuzzella

Brian P. Egan (#6227)
Lucinda C. Cucuzzella (#3491)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
began@morrisnichols.com
ccucuzzella@morrisnichols.com

J. David Hadden
Allen Wang
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
(650) 988-8500

Melanie L. Mayer
FENWICK & WEST LLP
401 Union Street, 5th Floor
Seattle, WA 98101
(206) 389- 4510

Robert Edward Counihan
FENWICK & WEST LLP
902 Broadway, 18th Floor
New York, NY 10010
(212) 430- 2600

Attorneys for Defendant
iRhythm Technologies, Inc.

March 27, 2025