

From: [Director Discretionary Decision](#)
To: [Kenneth Darby](#); [Director Discretionary Decision](#)
Cc: [Robert Ziemian IPR](#); [Foster, Theo](#); [Rainey, Ian](#); [Christopher Dillon](#); [Kenneth Hoover](#); [Ziemian, Robert](#)
Subject: RE: IPR2025-00559 - Authorization request for supplemental paper on discretionary denial
Date: Friday, June 13, 2025 1:41:39 PM

Petitioner is authorized to file a 2-page sur-reply in IPR2025-00559, due no later than Tuesday, June 17, 2025, limited to addressing arguments made in Patent Owner's reply brief.

From: Kenneth Darby <kdarby@fr.com>
Sent: Friday, June 13, 2025 12:41 PM
To: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
Cc: Robert Ziemian IPR <Robert.Ziemian.ipr@haynesboone.com>; Foster, Theo <Theo.Foster@haynesboone.com>; Rainey, Ian <Ian.Rainey@haynesboone.com>; Christopher Dillon <CWD@fr.com>; Kenneth Hoover <hoover@fr.com>; Ziemian, Robert <Robert.Ziemian@haynesboone.com>
Subject: RE: IPR2025-00559 - Authorization request for supplemental paper on discretionary denial

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Good afternoon,

Responsive to the email communication below, on June 12, 2025, Patent Owner filed a two-page reply brief with supporting exhibits in IPR2025-00559 discussing the "settled expectations" factor addressed in *iRhythm Techs., Inc. v. Welch Allyn, Inc.* Petitioner respectfully requests authorization to file a responsive two-page sur-reply brief with supporting exhibits by no later than June 17th.

There is good cause for this request because Petitioner could not have reasonably anticipated or preemptively addressed the new "settled expectations" arguments that Patent Owner raised for the first time in its reply brief.

Petitioner has consulted with counsel for Patent Owner regarding this request. Patent Owner responds as follows: "Patent Owner does not oppose if the sur-reply and exhibits are limited to responding to the issue addressed by Patent Owner's Reply: 'the applicability to this case of the Director's discretionary denial rationale articulated in *iRhythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (June 6, 2025).' Paper 10 at 4. Patent Owner opposes authorizing Petitioner to address any other issue."

Respectfully,

Kenneth Darby :: Principal :: Fish & Richardson P.C.
512 226 8126

From: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
Sent: Wednesday, June 11, 2025 2:00 PM
To: Ziemian, Robert <Robert.Ziemian@haynesboone.com>; Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
Cc: Robert Ziemian IPR <Robert.Ziemian.ipr@haynesboone.com>; Foster, Theo <Theo.Foster@haynesboone.com>; Rainey, Ian <Ian.Rainey@haynesboone.com>; Kenneth Darby <kdarby@fr.com>; Christopher Dillon <CWD@fr.com>; Kenneth Hoover <hoover@fr.com>
Subject: RE: IPR2025-00559 - Authorization request for supplemental paper on discretionary denial

[This email originated outside of F&R.]

Patent Owner is authorized to file a 2-page reply in IPR2025-00559, due no later than Thursday, June 12, 2025, limited to addressing *iRhythm Techs., Inc. v. Welch Allyn, Inc.*

From: Ziemian, Robert <Robert.Ziemian@haynesboone.com>
Sent: Tuesday, June 10, 2025 5:09 PM
To: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
Cc: Robert Ziemian IPR <Robert.Ziemian.ipr@haynesboone.com>; Foster, Theo <Theo.Foster@haynesboone.com>; Rainey, Ian <Ian.Rainey@haynesboone.com>; Kenneth Darby <kdarby@fr.com>; Christopher Dillon <cwd@fr.com>; Kenneth Hoover <hoover@fr.com>
Subject: IPR2025-00559 - Authorization request for supplemental paper on discretionary denial

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Madame Director:

Patent Owner ControlTec, LLC respectfully requests authorization in IPR2025-00559 to file a two-page supplemental paper explaining how this case presents the same facts that supported discretionary denial in *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (June 6, 2025). Good cause exists for this request because the Office's guidance had not previously identified the petitioner's delay from its first knowledge of a patent as a basis for discretionary denial, and the *iRhythm* decision indicates that such delay "outweighs" other considerations. *Id.* at 3. Patent Owner is prepared to file the supplemental paper promptly (within 1 day) of receiving authorization.

Patent Owner has consulted with counsel for Petitioner, which opposes as follows: "Petitioner opposes Patent Owner's untimely request for a reply brief that is not responsive to arguments raised in Petitioner's opposition brief (Paper 9). Patent Owner also cannot establish good cause based on an *iRhythm* decision that does not create a new factor for discretionary denial but instead

addresses the “settled expectations” factor identified in the Acting Director’s preexisting memorandum, which Patent Owner already discussed in its original brief on discretionary denial (Paper 7 at 17-18).”

Best regards,

Robert P. Ziemian

HAYNES BOONE

Robert Ziemian

Partner

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