

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BARDY DIAGNOSTICS, INC.,)	
)	
Plaintiff,)	
)	C.A No. _____
v.)	
)	DEMAND FOR JURY TRIAL
VITAL CONNECT, INC.,)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Bardy Diagnostics, Inc. (“BardyDx”), by and through its attorneys, and for its Complaint against Vital Connect, Inc. (“VitalConnect”) alleges as follows:

PARTIES

1. BardyDx is a Delaware corporation with its principal place of business at 316 Occidental Ave S, Suite B310, Seattle, Washington 98104.
2. VitalConnect is a Delaware corporation with its principal place of business at 224 Airport Parkway, Suite 300, San Jose, California 95110.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over BardyDx’s claims arising under the United States Patent Act, Title 35, including 35 U.S.C. § 271, pursuant to 28 U.S.C. § 1331 and 1338(a).
4. The Court has personal jurisdiction over VitalConnect at least because VitalConnect is organized and exists under the laws of the State of Delaware.
5. Venue is proper pursuant to 28 U.S.C. § 1400(b) because VitalConnect is a Delaware corporation and, therefore, resides in the District.

FACTUAL ALLEGATIONS

BardyDx's U.S. Patent No. 11,051,743

6. BardyDx was founded by an electrophysiologist and entrepreneur, Gust H. Bardy, M.D., to overcome challenges in ambulatory cardiac monitoring.

7. BardyDx is the developer of an industry leading electrocardiography monitor called the CAM™ patch.

8. BardyDx is also the assignee of the entire right, title and interest in numerous United States patents, including U.S. Patent No. 11,051,743 (“the ’743 patent”). The ’743 patent is attached hereto as Exhibit 1.

9. The ’743 patent is titled “Electrocardiography Patch” and was duly and legally issued on July 6, 2021.

10. The ’743 patent claims, among other things, an electrocardiography monitor comprising a backing including an elongated strip with a midsection connecting two ends of the backing. The mid-section is narrower than the two ends of the backing. An electrocardiographic electrode is on each end of the backing to capture electrocardiographic signals. A flexible circuit comprising a pair of circuit traces is electrically coupled to the electrocardiographic electrodes. The electrocardiography monitor also comprises a wireless transceiver to communicate a least a portion of the electrocardiographic signals, a battery on one of the ends of the backing, a processor powered by the battery, and a memory electrically interfaced with the processor and operable to store samples of the electrocardiographic signals.

VitalConnect's Infringing Activities and Products

11. Upon information and belief, VitalConnect has and continues to infringe claims 1-20 of the ’743 patent in violation of § 271(a) by making, using, selling, and/or offering for sale in the United States the products referred to, advertised and/or sold under the names VitalPatch or

VitalConnect Sensor, including without limitation the VitalPatch Biosensor, VitalPatch 1.0, VitalPatch 1.5, VitalPatch 2.0, VitalPatch RTM, and/or any other versions thereof that have been made, used, sold, and/or offered for sale in the United States by VitalConnect since the issuance of the '743 patent (“the VitalPatch”).

12. The VitalPatch is a battery-operated, wearable device to collect physiological data including, for example, heart rate, electrocardiographic signals, respiratory rate, body temperature, skin temperature, and activity such as step count. The VitalPatch includes, among other things, an adhesive patch, a pair of electrodes, at least one temperature sensor, a flexible circuit, a processor, an accelerometer, and a memory. The VitalPatch also includes a Bluetooth transmitter to communicate at least a portion of electrocardiographic signals to another device, such as a server and/or an end user’s computer or mobile device. Documents describing additional details on the components, features, and uses of the VitalPatch are attached as Exhibits 2-7.

13. As shown in the claim chart attached as Exhibit 8, the VitalPatch meets each and every element of claims 1-20 of the '743 patent, literally or under the doctrine of equivalents.

14. Since the filing and service of this Complaint, VitalConnect has indirectly infringed claims 1-20 of the '743 patent in violation of § 271(b) by actively and knowingly inducing patients to use the VitalPatch.

15. As an example of its induced infringement, upon information and belief, VitalConnect encloses in the VitalPatch packaging detailed instructions for patients to use the VitalPatch. VitalConnect also directs patients to access the instructions on its website through the following URL: <https://vitalconnect.com/resources/#instructions>. (See also Exhibits 3-6).

16. The VitalPatch Instructions provide patients with step-by-step mandatory instructions for, among other things, adhering the VitalPatch onto a patient’s body and connecting

the VitalPatch to another device to capture, measure, communicate, process, store, and transmit physiological data. (*See id.*)

17. VitalConnect has had knowledge of the '743 patent and VitalConnect's infringement of the '743 patent since at least the filing and service of this Complaint.

18. VitalConnect has knowingly induced infringement by end users and possessed specific intent to encourage the end users' infringement since at least the filing and service of this Complaint.

19. VitalConnect's infringement has been knowing, intentional, and willful since at least the filing and service of this Complaint.

COUNT I
(Infringement of the '743 Patent)

20. BardyDx incorporates by reference, as if fully set forth herein, each of the allegations set forth in paragraphs 1 through 19.

21. This is a claim for patent infringement under 35 U.S.C. § 271.

22. VitalConnect has directly infringed and continues to directly infringe the '743 patent.

23. VitalConnect has induced infringement of the '743 patent since at least the filing and service of this Complaint.

24. VitalConnect's infringement has damaged and injured, and continues to damage and injure, BardyDx.

25. The injury to BardyDx from VitalConnect's continuing infringement is irreparable and will continue unless VitalConnect is enjoined from further infringement.

26. VitalConnect has had actual knowledge of the '743 patent since at least the filing and service of this Complaint, yet VitalConnect continues to infringe the patent.

27. VitalConnect's knowing, intentional, and willful infringement justifies an increase of up to three times the damages to be assessed pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, BardyDx respectfully requests the following relief:

1. Judgement in BardyDx's favor and against VitalConnect on all claims for relief alleged herein;
2. Preliminary and permanent injunctive relief, including orders from this Court prohibiting VitalConnect, and anyone acting or participating by, through or in concert with VitalConnect, from infringing the '743 patent;
3. Damages in an amount to be further proven at trial, including trebling of all damages with respect to infringement of the '743 patent;
4. Determination that this is an exceptional case under 35 U.S.C. § 285;
5. Costs of suit incurred herein;
6. Prejudgment interest;
7. Attorneys' fees and costs; and
8. Such other and further relief as the Court may deem to be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Bardy Diagnostics, Inc. hereby demands a trial by jury on all issues so triable.

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