

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT DIABETES CARE INC. and	)	
ABBOTT DIABETES CARE LIMITED,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 23-239-KAJ
	)	
DEXCOM, INC.,	)	
	)	
Defendant.	)	

DEXCOM, INC.'S INITIAL PROPOSED CLAIM CONSTRUCTIONS

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Dated: February 28, 2024

In accordance with the Court's Scheduling Order (Dkt. No. 54), DexCom, Inc. ("DexCom") hereby provides to Abbott Diabetes Care Inc. and Abbott Diabetes Care Limited (collectively, "Abbott") its initial proposed claim constructions for identified claim terms, phrases, or clauses used in the asserted claims of U.S. Patent 11,202,591 ("the '591 patent"), U.S. Patent 11,266,335 ("the '335 patent"), and U.S. Patent 11,298,056 ("the '056 patent"), (collectively, the "Abbott Asserted Patents"), as well as an identification of claim terms, phrases, or clauses used in the asserted claims of U.S. Patent No. 9,119,528 ("the '528 Patent"), U.S. Patent No. 9,801,541 ("the '541 Patent"), U.S. Patent No. 11,213,204 ("the '204 Patent"), U.S. Patent No. 10,375,222 ("the '222 Patent"), U.S. Patent No. 10,709,364 ("the '364 Patent"), U.S. Patent No. 11,020,031 ("the '031 Patent"), U.S. and Patent No. 11,510,625 ("the '625 Patent") (collectively, the "DexCom Asserted Patents").

The proposed claim constructions set forth below are based on information currently available to DexCom; however, discovery is in its early stages and DexCom's investigation and analysis is ongoing. DexCom further contends that Abbott's Initial Infringement Contentions and Invalidity Contentions are overly general, vague, and ambiguous and thus fail to sufficiently identify how each element of the DexCom asserted claims is met by the accused products. DexCom therefore reserves the right to modify, amend, or supplement these proposed constructions should Abbott amend its infringement contentions for the Abbott Asserted Patents and/or its invalidity contentions for the DexCom Asserted Patents. DexCom also reserves the right to modify, amend, or supplement these proposed claim constructions in light of meeting and conferring with Abbott concerning the parties' proposed claim constructions, based upon DexCom's continued discovery, evaluation of the scope and content of the prior art, or for any other reason permitted by applicable law or the Court's rulings.

With respect to identifications made as to Abbott Asserted Patents, no inference is intended nor should any be drawn that the claim terms identified below satisfy 35 U.S.C. § 112, and Dexcom reserves the right to contend otherwise.

'591 and '335 patent term	Proposed construction
PROPOSED BY DEXCOM	
“housing”	“structure that defines an interior compartment”

'335 patent term	Proposed construction
PROPOSED BY DEXCOM	
“engagement boss”	“protrusion with rounded edges that engages positively in a recess via external force”
“inactive mode”	“powered down”

'056 patent term	Proposed construction
PROPOSED BY DEXCOM	
“adverse condition”	“a detected system malfunction, error, or failure that results in an inability or disabling of the monitoring system to display or output processed data.”
“sensor misposition error”	“improper positioning of the sensor in or on a user’s body”

'528 patent term	Proposed construction
PROPOSED BY DEXCOM	
“second function”	“function that provides a predictive alert/alarm”

PROPOSED BY ABBOTT	
“evaluating a dynamic risk of the predicted glucose value”	Plain and ordinary meaning.
“the hypoglycemic indicator comprises a flag that has a particular set of instructions associated with it depending on ...”	Plain and ordinary meaning.
“[evaluating / evaluation of] the sensor data using the first function and the second function [allows for / provides] increased warning time of hypoglycemic alerts without substantially increasing the number of alerts as compared to [evaluating / evaluation of] the sensor data using the first function without [evaluating / evaluation of] the sensor data using the second function”	Plain and ordinary meaning.
“[the first order autoregressive model comprises a forgetting factor, a prediction horizon and a prediction threshold tuned to provide / the second function provides] no more than one additional alarm per week based on a retrospective analysis comparing the use of the first function and the second function together as compared to the first function alone”	Plain and ordinary meaning.

'541 patent term	Proposed construction
PROPOSED BY ABBOTT	
“wherein the wireless mobile remote monitor or a user of the wireless mobile remote monitor is specifically authorized by the host to receive the alert notification message to augment the receiver monitoring of the analyte state of the host”	Plain and ordinary meaning.
“rules” / “settings” terms: - “rules” - “settings” - “alert rules settings”	Plain and ordinary meaning.

- “alert rules”	
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’204 patent term	Proposed construction
PROPOSED BY ABBOTT	
“rules” / “settings” terms: - “rules” - “settings” - “first setting” - “one or more preferences or settings” - “recommended rule settings”	Plain and ordinary meaning.
“wherein accepting the invitation, programmatically establishes an account associated with the [remote monitor / apparatus] at the secure server”	Plain and ordinary meaning.

’364 patent term	Proposed construction
PROPOSED BY ABBOTT	
“reference glucose concentration values”	Plain and ordinary meaning.

’031 patent term	Proposed construction
PROPOSED BY ABBOTT	
“drift profile”	Plain and ordinary meaning.

’625 patent term	Proposed construction
PROPOSED BY ABBOTT	
“wherein the needle hub is coupled to the [insertion element/needle] by heat staking, snap-fit, friction-fit, clamshell[,] or insert	Plain and ordinary meaning.

molding”	
“a locking element configured to couple the [insertion element/needle] to the needle hub by insert molding”	Plain and ordinary meaning.

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Dated: February 28, 2024

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2024, this document was served on

AbbottDexcomDELitigation@kirkland.com and on the persons listed below in the manner indicated:

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