

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEXCOM, INC.,
Petitioner,

v.

ABBOTT DIABETES CARE INC.,
Patent Owner.

Case IPR2023-01251
Patent 11,298,056 B2

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b) and the Federal Rules of Evidence, Petitioner DexCom, Inc. (“Petitioner”) hereby submits the following objections to the evidence Patent Owner filed with its Patent Owner Response dated May 22, 2024 (Paper 20). Petitioner’s objections apply equally to Patent Owner’s reliance on this evidence in any subsequently filed documents or hearing in this proceeding.

Petitioner objects as follows to the admissibility of the following evidence.

Evidence	Objections
Exhibit 2012 (U.S. Patent No. 9,577,934)	Relevance: Exhibit 2012 is not cited or discussed in Patent Owner’s Preliminary Response or Patent Owner’s Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 2013 (Declaration of Eugene E. Wright, Jr. MD)	Relevance: Patent Owner has not established a relationship between paragraphs 67-74, 79-83, 103-105, 148, 159-162 of exhibit 2013 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by these paragraphs is substantially outweighed by their risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the following paragraphs of exhibit 2013 are not cited in the Patent Owner’s Response or Preliminary Response and, therefore, are not relevant, and risks confusing the issues and prejudicing Petitioner: ¶¶ 39-46, 51-53, 56, 59-74, 79-80,

	84, 91-93, 96-98, 102, 106, 111-125, 164-167, 170-171, 176-178, 180-182, 193-194, 196-200, 204-210, 213-221, 232-233, 242-244, 248, 255-256, 258, 260, 265-266, 272-276, 282-289, 293-299, 310-311, 313-314, 322. FRE 402; FRE 403; 37 C.F.R. § 42.61. Improper Expert Testimony: Paragraphs 135-138 and 140 of exhibit 2013 will not “help the trier of fact to understand the evidence or to determine a fact in issue,” are not based on the application of Dr. Wright’s “scientific, technical, or other specialized knowledge,” are not “based on sufficient facts or data,” and are not “the product of reliable principles and methods.” FRE 702.
Exhibit 2014 (Curriculum Vitae of Eugene E. Wright, Jr. MD)	Relevance: The exhibit is not cited or discussed in Patent Owner’s Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 2015 (Declaration of Aaron Striegel, Ph.D.)	Relevance: Patent Owner has not established a relationship between paragraphs 45-46 of exhibit 2015 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by these paragraphs is substantially outweighed by their risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the following paragraphs of exhibit 2015 are not cited in the Patent Owner’s Response or Preliminary Response and, therefore, are not relevant, and risks

	confusing the issues and prejudicing Petitioner: ¶¶ 27-35. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 2016 (Cappon et al., Continuous Glucose Monitoring Sensors for Diabetes Management: A Review of Technologies and Applications, J. Diab. Metab. 43:383-397 (2019))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2017 (American Diabetes Association, Role of Continuous Glucose Monitoring in Diabetes Treatment (2018), available at https://pubmed.ncbi.nlm.nih.gov/30958664/)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2018 (The MiniMed Paradigm® REAL- Teim Insulin Pump User Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901.
Exhibit 2019 (DexCom STS-7 Continuous Glucose Monitoring System User's Guide Submitted Under FCC ID PH29402)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between exhibit 2019 and facts that are of consequence in determining this

	action. FRE 401(b). Specifically, exhibit 2019 is only cited in paragraph 67 of exhibit 2013 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2020 (DexCom G6 Continuous Glucose Monitoring System User Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between exhibit 2020 and facts that are of consequence in determining this action. FRE 401(b). Specifically, exhibit 2020 is only cited in paragraphs 68-71 of exhibit 2013 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially

	outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2021 (Abbott FreeStyle Navigator Continuous Glucose Monitoring System User's Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between exhibit 2021 and facts that are of consequence in determining this action. FRE 401(b). Specifically, exhibit 2021 is only cited in paragraph 72 of exhibit 2013 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and

	prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2022 (Abbott FreeStyle Libre 3 Continuous Glucose Monitoring System User's Manual)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between exhibit 2022 and facts that are of consequence in determining this action. FRE 401(b). Specifically, exhibit 2022 is only cited in paragraph 73 of exhibit 2013 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative

	value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2023 (U.S. Patent No. 10,085,640)	Relevance: Patent Owner has not established a relationship between exhibit 2023 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues. FRE 403; <i>see e.g., Wyers v. Master Lock Co.</i> , 616 F.3d 1231, 1242, 1245 (Fed. Cir. 2010); <i>Key Tech., Inc. v. Simco/Ramic Corp.</i> , 137 F.R.D. 322, 324 (D. Or. 1991).
Exhibit 2024 (U.S. Patent No. 9,996,668)	Relevance: Patent Owner has not established a relationship between exhibit 2024 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues. FRE 403; <i>see e.g., Wyers v. Master Lock Co.</i> , 616 F.3d 1231, 1242, 1245 (Fed. Cir. 2010); <i>Key Tech., Inc. v. Simco/Ramic Corp.</i> , 137 F.R.D. 322, 324 (D. Or. 1991).
Exhibit 2025 (Das et al., Review— Electrochemistry and Other Emerging Technologies for Continuous Glucose Monitoring Devices, ECS Sensors Plus (2022))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.

Exhibit 2026 (Almurashi et al., Emerging Diabetes Technologies: Continuous Glucose Monitors/Artificial Pancreases, J. Indian Inst. Sci. (2023))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2028 (Centers for Disease Control and Prevention—National Diabetes Statistics Report, available at https://www.cdc.gov/diabetes/data/statistics-report/diagnosed-undiagnosed-diabetes.html.)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: The exhibit is not cited or discussed in Patent Owner’s Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2029 (Garg et al., Flash Glucose Monitoring: The Future Is Here, Diabetes Tech. & Therapeutics 19.S2 (2017))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: The exhibit is not cited or discussed in Patent Owner’s Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and

	prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2030 (DexCom SEVEN Plus Users Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Any probative value provided by exhibit 2030 is substantially outweighed by its risks of confusing issues, needlessly presenting cumulative evidence, and prejudicing Petitioner. FRE 403. For example, citation to exhibit 2030 in paragraph 68 of exhibit 2013 regard statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2031 (DexCom G5 Mobile CGM System User Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Any probative value provided by exhibit 2031 is substantially outweighed by

	its risks of confusing the issues, needlessly presenting cumulative evidence, and prejudicing Petitioner. FRE 403. For example, citation to exhibit 2031 in paragraph 68 of exhibit 2013 regard statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit’s probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2033 (Atmel Product Guide (Winter 2008), available at https://media.digikey.com/pdf/Data%20Sheets/Atmel%20PDFs/Products%20Select%20Guide.pdf)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between exhibit 2033 and facts that are of consequence in determining this action. Specifically, exhibit 2033 is only cited in paragraph 45 of exhibit 2015 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner’s Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61.

	Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2034 (Atmel – Atmega169P Datasheet, available at https://ww1.microchip.com/downloads/en/DeviceDoc/doc8018.pdf)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between exhibit 2034 and facts that are of consequence in determining this action. Specifically, exhibit 2034 is only cited in paragraph 46 of exhibit 2015 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.

Respectfully submitted,

Dated: May 30, 2024

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CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6(E)(4)

The undersigned certifies that on May 30, 2024, a complete copy of
PETITIONERS' OBJECTIONS TO PATENT OWNER'S EVIDENCE was
served on Patent Owner via electronic mail as follows:

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