

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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DEXCOM, INC.,  
Petitioner,

v.

ABBOTT DIABETES CARE INC.,  
Patent Owner.

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Case No. IPR2023-01251

U.S. Patent No. 11,298,056

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**PATENT OWNER'S OBJECTIONS TO ADMISSIBILITY OF EVIDENCE  
SERVED WITH PETITIONER'S REPLY TO PATENT OWNER'S  
RESPONSE**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner objects as follows to the admissibility of evidence served with Petitioner's Reply to Patent Owner's Response (Paper 25) on September 6, 2024.

| <b>Evidence</b>                                                                                                                                            | <b>Objections</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>Exhibit 1050</b><br>(Eugene Wright, Jr. M.D., et al.,<br><i>Ambulatory Glucose Profiling</i> , The<br>Journal of Family Practice 64.12<br>(Supp. 2015)) | <b>Relevance:</b> The exhibit is not cited or discussed in Petitioner's Reply and, therefore, is not relevant. The exhibit is also not relevant to any theory of unpatentability set forth in the Petition. FRE 402; FRE 403; 37 C.F.R. § 42.61.                                                                                                                                                                                                                                                                                                                                                  |
| <b>Exhibit 1051</b><br>(Excerpt from Wayback Paradigm2)                                                                                                    | <b>Relevance:</b> The exhibit is not cited or discussed in Petitioner's Reply and, therefore, is not relevant. The exhibit is also not relevant to any theory of unpatentability set forth in the Petition. FRE 402; FRE 403; 37 C.F.R. § 42.61.                                                                                                                                                                                                                                                                                                                                                  |
| <b>1052</b><br>(Affidavit of Nathaniel E Frank-White,<br>including Exhibit A)                                                                              | <b>Incomplete:</b> The exhibit is incomplete at least because additional documents and/or webpages available at hyperlinks therein were not submitted with the exhibit. FRE 106.<br><br><b>Relevance:</b> The exhibit is not relevant, and its probative value is substantially outweighed by unfair prejudice, because the exhibit is not complete and because it is improper Reply evidence. FRE 402; FRE 403; 37 C.F.R. § 42.61.<br><br><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay |

| Evidence                                                                                                                                                                            | Objections                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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|                                                                                                                                                                                     | exception applies. FRE 801-807.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p style="text-align: center;"><b>1055</b></p> <p style="text-align: center;">(Declaration of Andrew Ahmann M.D.<br/>In Support of Dexcom's Reply, dated<br/>September 4, 2024)</p> | <p><b>Relevance:</b> The probative value of the exhibit is substantially outweighed by unfair prejudice at least because it constitutes improper Reply evidence. As an example, the declarant offers testimony that should have been and could have been submitted with the Petition. Further, the following paragraphs are not cited in the Reply and, therefore, are not relevant: ¶¶ 1-5, 7-17, 66-75, 82-83. FRE 402; FRE 403; 37 C.F.R. § 42.61.</p>                                                                                                                                                                                                                                                                                                                                                                                  |
| <p style="text-align: center;"><b>1057</b></p> <p style="text-align: center;">(Reply Declaration of Brian D. Gross,<br/>dated September 6, 2024)</p>                                | <p><b>Relevance:</b> The probative value of the exhibit is substantially outweighed by unfair prejudice at least because it constitutes improper Reply evidence. As an example, the declarant purports to support previously-rendered opinions with new evidence. Further, the following paragraphs are not cited in the Petition or Reply and, therefore, are not relevant: ¶¶ 1-4, 6-7, 33. FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Improper Testimony:</b> The exhibit contains statements for which the declarant lacks the knowledge, skill, experience, training, or education to testify as an expert in a matter that is helpful to the Board, provides opinions that are not based on sufficient facts or data, and fails to identify with particularity the facts on which the opinions are based, for example, at ¶¶</p> |

| Evidence                                                                                                                                                                                                                                                                    | Objections                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                             | 32-52. FRE 401; FRE 402; FRE 403; FRE 702; 37 C.F.R. § 42.65.                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p style="text-align: center;"><b>1058</b></p> <p>(U.S. Food and Drug Administration, Center for Drug Evaluation and Research, Medtronic MiniMed Guardian RT, Premarket Approval P980022/S011, dated July 18, 2005)</p>                                                     | <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p>                                                                                                                                                            |
| <p style="text-align: center;"><b>1059</b></p> <p>(U.S. Food and Drug Administration, Center for Drug Evaluation and Research, Medtronic MiniMed Guardian RT, Summary of Safety and Effectiveness Data (SSED))</p>                                                          | <p><b>Relevance:</b> The exhibit is not cited or discussed in Petitioner's Reply and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p> |
| <p style="text-align: center;"><b>1061</b></p> <p>(The Juvenile Diabetes Research Foundation Continuous Glucose Monitoring Study Group, <i>Continuous Glucose Monitoring and Intensive Treatment of Type 1 Diabetes</i>, New England Journal of Medicine 359:14 (2008))</p> | <p><b>Relevance:</b> The exhibit is not cited or discussed in Petitioner's Reply and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay</p>                                                                                                                                                     |

| Evidence                                                                                                                                                                                         | Objections                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                  | <p>exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p>                                                                                                                                                                                                                                                                                                                   |
| <p><b>1062</b></p> <p>(Richard M. Bergenstal, M.D., et. al., <i>Effectiveness of Sensor-Augmented Insulin-Pump Therapy in Type 1 Diabetes</i>, New England Journal of Medicine 363:4 (2010))</p> | <p><b>Relevance:</b> The exhibit is not cited or discussed in Petitioner's Reply and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p> |
| <p><b>1063</b></p> <p>(Howard Wolpert, M.D., <i>Establishing a Continuous Glucose Monitoring Program</i>, Journal of Diabetes Science and Technology, 2:2 (2008))</p>                            | <p><b>Relevance:</b> The exhibit is not cited or discussed in Petitioner's Reply and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p> |

| Evidence                                                                                                                                                                                                                                                                   | Objections                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p style="text-align: center;"><b>1064</b></p> <p>(John Mastrototaro, et. al., <i>Accuracy of Real-Time Continuous Glucose Monitoring in the MiniMed Paradigm System</i>, American Diabetes Association 67<sup>th</sup> Scientific Sessions, Diabetes 56 (Supp. 2007))</p> | <p><b>Relevance:</b> The exhibit is not cited or discussed in Petitioner's Reply and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p> |
| <p style="text-align: center;"><b>1065</b></p> <p>(Linkedin Profile of Wesley Scott Harper)</p>                                                                                                                                                                            | <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p>                                                                                                                                                            |
| <p style="text-align: center;"><b>1066</b></p> <p>(Plaintiff's Opening Claim Construction Brief (ECF 135), <i>Abbott Diabetes Care, Inc., et al. v. Dexcom, Inc.</i>, Case No. 1:21-cv-00977-KAJ (July 13, 2022, D. Del.))</p>                                             | <p><b>Relevance:</b> The exhibit relates to claim construction for a different patent in a different proceeding and, therefore, is not relevant to any issue in this proceeding. Any probative value of the exhibit is substantially outweighed by other considerations, including unfair prejudice and confusion. FRE 401; FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901</p>                     |

| Evidence                                                                                                                                                                                                                                                                                                                       | Objections                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|                                                                                                                                                                                                                                                                                                                                | and is not self-authenticating.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p style="text-align: center;"><b>1067</b></p> <p style="text-align: center;">(Expert Declaration of Majid Sarrafzadeh, Ph.D. in Support of Abbott's Opening Claim Construction Brief (ECF 137), <i>Abbott Diabetes Care, Inc., et al. v. Dexcom, Inc.</i>, Case No. 1:21-cv-00977-KAJ (July 13, 2022, D. Del.) (excerpt))</p> | <p><b>Relevance:</b> The exhibit relates to claim construction for a different patent in a different proceeding and, therefore, is not relevant to any issue in this proceeding. Any probative value of the exhibit is substantially outweighed by other considerations, including unfair prejudice and confusion. FRE 401; FRE 402; FRE 403; 37 C.F.R. § 42.61.</p> <p><b>Hearsay:</b> To the extent the exhibit is relied upon to prove the truth of the matter asserted, it constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.</p> <p><b>Authenticity:</b> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.</p> |

Date: September 13, 2024

Respectfully submitted,

/Leland G. Hansen/

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Patent Owner's Objections to Admissibility of Evidence Served with Petitioner's Reply to Patent Owner's Response** in connection with *Inter Partes* Review IPR2023-01251 was served on September 13, 2024 by electronic mail to the following:

| <b>Lead Counsel</b>                                                                                                                                                                         | <b>Back-Up Counsel</b>                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| John D. Vandenberg<br>KLARQUIST SPARKMAN, LLP<br>121 SW Salmon Street, Suite 1600<br>Portland, Oregon, 97204<br>503-595-5300 (phone)<br>503-595-5301 (fax)<br>john.vandenberg@klarquist.com | Andrew M. Mason<br>KLARQUIST SPARKMAN, LLP<br>121 SW Salmon Street, Suite 1600<br>Portland, Oregon, 97204<br>503-595-5300 (phone)<br>503-595-5301 (fax)<br>andrew.mason@klarquist.com |
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|                                                                                                                                                                                             | Tucker T. Mottl<br>KLARQUIST SPARKMAN, LLP<br>121 SW Salmon Street, Suite 1600<br>Portland, Oregon, 97204<br>503-595-5300 (phone)<br>503-595-5301 (fax)<br>tucker.mottl@klarquist.com |

Dated: September 13, 2024

/Leland G. Hansen/

Leland G. Hansen, Reg. No. 50,731

CUSTOMER NUMBER: 23446