

From: [Peter McAndrews](#)
To: [Director PTABDecision Review](#)
Cc: Dexcom-AbbottIPRs@klarquist.com; [IPR2023-01409](#)
Subject: DexCom, Inc. v. Abbott Diabetes Care Inc., IPR2023-01409
Date: Monday, April 29, 2024 6:09:02 PM
Attachments: [McAndrews-Logo_b981f23b-af61-4e79-9eb1-f721417fba3e.PNG](#)
[IPR2023-01409 - Patent Owner's Petition for Director Review \(Paper 12\).pdf](#)

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Director Vidal:

Pursuant to the Revised Interim Director Review Process, Patent Owner Abbott Diabetes Care, Inc. ("Abbott") seeks Director review of the Board's Institution Decision (Paper 10) in *Inter Partes* Review No. IPR2023-01409. A copy of the request is attached.

Director review is appropriate both because the panel abused its discretion in instituting and the issue is an important issue of law and policy. Specifically, Director review is needed to correct a misapplication of *Advanced Bionics* and clarify a split among panels as to whether, under 35 U.S.C. § 325(d), petitioners must affirmatively demonstrate material Office error when re-raising art that was already before the Office, or whether a panel may infer such error by the Office based on the petitioned grounds. Because Petitioner here failed to even attempt to show any material error by the Office, the Director should vacate the institution decision and deny institution. Director review will not only correct this error but further promote certainty among petitioners, patent owners, and panels and ensure compliance with *Advanced Bionics* and 35 U.S.C. § 325(d).

Respectfully submitted,
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