

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEXCOM, INC.,
Petitioner,

v.

ABBOTT DIABETES CARE INC.,
Patent Owner.

Case No. IPR2023-01409

U.S. Patent No. 11,202,591

**PATENT OWNER'S OBJECTIONS TO
PETITIONER'S EXHIBITS SUBMITTED WITH ITS REPLY**

Pursuant to 37 C.F.R. § 42.64(b)(1), Abbott Diabetes Care Inc. (“Abbott”) serves and submits the following objections to exhibits served with DexCom, Inc.’s Petitioner’s Reply to Patent Owner’s Response for the *Inter Partes* Review of U.S. Patent No. 11,202,591.

Abbott objects to Exhibit 1044 as set forth in the objections lodged during the deposition of Mr. Karl Leinsing and to the extent the information used therein is irrelevant to any issue in this matter.

Abbott objects to Exhibit 1045 to the extent it includes inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402, and 403. Many of the opinions expressed there are inadmissible to the extent that they are speculative and lack support, relate to irrelevant matters, or are based on legally improper standards or claim misinterpretations. Abbott further objects under at least Fed. R. Evid. 401, 402, 403, and 702 as well as 37 C.F.R. § 42.65 because the witness offering declaration testimony lacks the knowledge, skill, experience, training, or education to testify as an expert in a manner 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 his opinions are based. Abbott further objects to the extent that the exhibit contains information that should or could have been submitted with the Petition (rather than a Reply). Abbott further objects to the extent that Exhibit 1045 relies upon irrelevant information from after the priority date of the patent at issue,

or that does not constitute prior art or reflect the state of the art, or to the extent it addresses subject matter that is not appropriate for an IPR (e.g., alleged product prior art).

Abbott objects to Exhibits 1046 as inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402, and 403, at least to the extent that the exhibit is not relevant to the issues for which it is being presented including the purported state of the art. Abbott further objects to the exhibit to the extent that Petitioner relies upon it for unauthenticated hearsay under at least Fed. R. Evid. 801, 802 and 901. Abbott further objects to the exhibit under Fed. R. Evid. 401, 402, 403, 801, 802, and 901, at least to the extent that Petitioner has not established the unauthenticated document is prior art and to the extent that it reflects prior art products that are not the subject of an IPR. Abbott further objects to the extent that the exhibit contains information that should or could have been submitted with the Petition (rather than a Reply).

Abbott objects to Exhibits 1047 and 1048 inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402, and 403, at least to the extent that the exhibits are not relevant to the issues for which they are being presented. Abbott further objects to the exhibits to extent that Petitioner relies upon them for inadmissible, unauthenticated hearsay under at least Fed. R. Evid. 801, 802, and 901. Abbott further objects to Exhibit 1047 under at least Fed. R. Evid. 401, 402, and 403 to the extent Petitioner relies upon information from after the priority date of the patent at

issue. Abbott further objects to the extent that the exhibits contain information that should or could have been submitted with the Petition (rather than a Reply).

Abbott objects to Exhibits 1050, 1051, 1052, 1054, 1056, 1062, 1066, and 1067, which purport to be various website printouts, as inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402, and 403, at least to the extent that the exhibits are not relevant to the issues for which they are being presented including the purported state of the art. Abbott further objects to the exhibits to the extent that Petitioner relies upon them for unauthenticated hearsay under at least Fed. R. Evid. 801, 802 and 901. Additionally, Petitioner has not established that the submitted web pages are publicly available printed publications prior to the priority date, are available prior art within the meaning of 35 U.S.C. § 102, or were otherwise made available to the extent that persons interested in the subject matter or art, exercising reasonable diligence, could locate the exhibits prior to the critical date. There is also no evidence that these exhibits have any bearing on any prior art in the grounds articulated. Abbott further objects to Exhibits 1050, 1052, 1054, 1056, 1062, 1066, and 1067, which are dated well after the critical date, under at least Fed. R. Evid. 401, 402, and 403 to the extent Petitioner relies upon information from after the priority date of the patent at issue including to the extent used to address arguments related to the state of the art. Abbott further objects to Exhibit 1056, which is purported to be from the “Wayback Machine,” without adequate authenticating

evidence from that organization. Abbott further objects to the exhibits to the extent that the exhibits contain information that should or could have been submitted with the Petition (rather than a Reply). Abbott further objects to Exhibits 1051 and 1066, which purport to be items from the Food and Drug Administration, as irrelevant at least because Petitioner does not allege that the Food and Drug Administration documents have any bearing on the asserted prior art at issue. Abbott further objects to Exhibits 1050, 1054, and 1067 to the extent that they reflect prior art products that are not the subject of an IPR.

Abbott objects to Exhibit 1053 as inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402, and 403, at least to the extent that the exhibit is not relevant to the issues for which it is being presented including the purported state of the art. Abbott further objects to the exhibit to the extent that Petitioner relies upon it for unauthenticated hearsay under at least Fed. R. Evid. 801, 802 and 901. Abbott further objects to the exhibit under Fed. R. Evid. 401, 402, 403 and 901, at least to the extent that Petitioner has not established the unauthenticated photographs are prior art products or evidence the state of any prior art product; indeed, the product in the photographs purport to be from 2022, well after the priority date of the patent at issue. Abbott further objects to the exhibit to the extent that it reflects products that are not the subject of an IPR, and to the extent that the exhibit contains

information that should or could have been submitted with the Petition (rather than a Reply).

Abbott objects to Exhibit 1055 to the extent it includes inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402 and 403. Many of the statements therein are inadmissible to the extent that they are speculative and lack support, or relate to irrelevant matters. Abbott further objects under at least Fed. R. Evid. 401, 402, 403, 701, and 702 as well as 37 C.F.R. § 42.65 because the witnesses offering declaration testimony lacks the personal knowledge, skill, experience, training or education to testify in a manner 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 their statements are based. Abbott further objects to the exhibit to the extent that the exhibit contains information that should or could have been submitted with the Petition (rather than a Reply) and relies upon irrelevant information from after the priority date of the patent at issue.

Abbott objects to Exhibits 1057, 1058, 1060, 1061, 1063, and 1064 as inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402, and 403, at least to the extent that the exhibits are not relevant to the issues for which they are being presented including the purported state of the art. Abbott further objects to the exhibits to the extent that Petitioner relies upon them for inadmissible hearsay under at least Fed. R. Evid. 801 and 802. Abbott further objects to the at least to the extent

that Petitioner has not established the exhibits are prior art. Abbott further objects to the extent that the exhibits contain information that should or could have been submitted with the Petition (rather than a Reply).

Abbott objects to Exhibit 1059 to the extent it includes inadmissible irrelevant evidence under at least Fed. R. Evid. 401, 402, 403, and 901 to the extent that exhibits are not relevant to the issues for which they are being presented. Abbott further objects to the exhibit to the extent that Petitioner relies upon it for inadmissible hearsay under at least Fed. R. Evid. 801 and 802. Abbott further objects to this exhibit to the extent that it is incomplete under at least Fed. R. Evid. 106. Abbott further objects to the extent that the exhibit contains information that should or could have been submitted with the Petition (rather than a Reply).

Abbott objects to Exhibit 1065 as inadmissible and irrelevant evidence under at least Fed. R. Evid. 401, 402, 403, to the extent the exhibit is not relevant to the issues for which it is being presented. Abbott further objects to the extent that the exhibit contains information that should or could have been submitted with the Petition (rather than a Reply).

Abbott further objects to Exhibits 1044, 1051, 1053, 1054, 1055, 1056, 1062, 1063, 1064, 1065, 1066, and 1067 under at least Fed. R. Evid. 401, 402, and 403, as well as 37 C.F.R. §§ 42.22(a)(2) and 42.23(a) and 42.6, at least because Petitioner

has not discussed or even cited to this evidence in its Reply and the evidence is not relevant to any issues in this case.

Dated: November 1, 2024

/Sandra A. Frantzen/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Patent Owner's Objections to Petitioner's Exhibits Submitted with its Reply** in connection with *Inter Partes* Review IPR2023-01409 was served on November 1, 2024 by electronic mail to the following:

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