

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABBOTT LABORATORIES AND
ABBOTT DIABETES CARE INC.,

Petitioners,

v.

ALTIVERA LLC,

Patent Owner.

Case No. IPR2024-00425

Patent No. 7,969,307 B2

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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EXHIBIT LIST

PATENT OWNER'S EXHIBITS	
Exhibit No.	Description
2001	Declaration of William Bandy, Ph.D.
2002	Declaration of John P. Peeters, Ph.D.
2003	Feb. 1, 2005 email from John Melngailis, Bates numbered GEN-AB-0003666 in <i>Gentag, Inc. v. Abbott Laboratories</i> , No. 1:23-cv-00310 (N.D. Ill.)
2004	May 6, 2003 handwritten notes by John Peeters, Bates numbered GEN-AB-00001440 in <i>Gentag, Inc. v. Abbott Laboratories</i> , No. 1:23-cv-00310 (N.D. Ill.)
2005	May 7, 2003 letter from John Peeters, Bates numbered GEN-AB-0001441-1442 in <i>Gentag, Inc. v. Abbott Laboratories</i> , No. 1:23-cv-00310 (N.D. Ill.)
2006	Aug. 19, 2003 email from John Peeters, Bates numbered GEN-AB-00002974-2977 in <i>Gentag, Inc. v. Abbott Laboratories</i> , No. 1:23-cv-00310 (N.D. Ill.)
2007	Defendants' Reply Claim Construction Brief, <i>Gentag, Inc. v. Abbott Laboratories</i> , Case No. 1:23-cv-310 (N.D. Ill. May 24, 2024), ECF No. 87
2008	Nokia 1100 User Guide
2009	Declaration of Steve Warren, Ph.D.
2010	Curriculum Vitae of Steve Warren, Ph.D.
2011	Transcript of Sept. 26, 2024 Deposition of Dr. Majid Sarrafzadeh
2012	Nokia 1100 full phone specifications (https://www.gsmarena.com/nokia_1100-512.php)

PATENT OWNER'S EXHIBITS	
Exhibit No.	Description
2013	Robert Triggs, <i>A little history of Bluetooth</i> , dated Sept. 1, 2023 (https://www.androidauthority.com/history-bluetooth-explained-846345/)
2014	Len Ott, <i>The Evolution of Bluetooth In Wireless Medical Devices</i> , Socket Mobile (July 2010)
2015	Wikipedia, <i>Near-field communication</i> , last accessed Oct. 7, 2024
2016	Nathan Lawrentschuk & Damien M. Bolton, SYSTEMATIC REVIEW, <i>Mobile phone interference with medical equipment and its clinical relevance: a systematic review</i> , Vol. 181, No. 3 (Aug. 2004)
2017	A.A. Klein & G. N. Djaiani, JAPI, <i>Mobile Phones in the hospital – past, present and future</i> , Anesthesia (2003)
2018	ME YEOLEKAR & A SHARMA, <i>Use of Mobile Phones in ICU – Why Not Ban?</i> , Vol. 51 (Apr. 2004)
2019	Hiroshi Furuhashi, JIKEI UNIV. SCHOOL OF MEDICINE TOKYO, JP, <i>Electromagnetic Interferences of Electric Medical Equipment from hand-held radiocommunication Equipment</i>
2020	P Gilligan, et al., THE BRITISH JOURNAL OF RADIOLOGY, <i>GSM cell phones can interfere with ionizing radiation dose monitoring equipment</i> (2000)
2021	Werner E. Irnich & Rolf Tobisch, <i>Mobile Phones in Hospitals</i>
2022	Greg Knell, <i>SureCall Cell Phone Signal Booster Blog</i> (Feb. 2022), https://surecall.com/surecall-cell-phone-signal-booster-blog/cellular-phone-frequency-bands-guide-2022/
2023	U.S. Patent Publication 2016/0026767A1
2024	Transcript of Feb. 19, 2025 Deposition of Dr. Majid Sarrafzadeh

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Exhibit No.	Description
2025	Patent Owner's Demonstratives

I. INTRODUCTION

Altivera, LLC (“Patent Owner” or “PO”) requests Director Review of the Board’s Final Written Decision (“FWD,” Paper 46), finding claims 1-3, 5, 9, and 10 of U.S. Patent No. 7,969,307 (Ex. 1001 (“the ’307 Patent”)) unpatentable.

As an initial matter, the Board should never have instituted trial on a 14-year-old patent based on two references that were not only included in an IDS, but were expressly incorporated into the specification of the ’307 Patent (namely, the Bandy and Lovejoy references). The Board also should have determined at institution whether Petitioners’ first two grounds relied on a reference that was not prior art by another (the Bandy reference). Failure to timely decide that issue forced PO to unnecessarily devote resources to substantively respond to those grounds. Given the weakness of the grounds, the Board should have denied institution of trial.

The Board’s erroneous FWD findings—based on arguments that Petitioners were not even asserting—illustrate the problems with the initial Petition and highlight why the Board should not have instituted trial. In particular, the Board’s decision contains multiple erroneous findings of material fact regarding limitation [1c], requiring a diagnostic sensor unit comprising “a unique identification number.”

First, the Board found that the “claim does not include language specifying what the ‘unique identification ID number’ identifies.” FWD, 35. This is contrary to the plain language of the claim: The “unique identification ID number” clearly

identifies the “diagnostic sensor unit.” In fact, the Board found that the “unique identification ID number,” need not be *unique* at all, but could instead represent a collection of every diagnostic sensor of the same type—potentially tens of thousands of sensors. *Id.* Not only were these findings wrong, they were based on arguments that Petitioners’ counsel expressly disavowed.

Second, Petitioners failed to show a reasonable expectation of success that the Beck-Heller-Lovejoy combination would include a diagnostic sensor unit with a “unique identification ID number.” There is no such diagnostic sensor unit in Beck. Nor does Heller disclose this, and not even Petitioners argue that it does.

II. LEGAL STANDARD

The Director may reverse Board decisions where, as here, those decisions involve an abuse of discretion, important issues of law or policy, erroneous findings of material fact, or erroneous conclusions of law. Director Review Process §2.B.

III. BACKGROUND

A. Overview of the '307 Patent (Ex-1001)

The '307 Patent is directed to a novel system for wireless diagnostics using radio frequency identification (RFID) tags that are combined with diagnostic sensors. Ex-1001, 2:14-17. The technology allows a wireless RFID reader to perform diagnostic tests using RFID tags and sensors integrated with disposable skin patches. *Id.*, 2:21-24, 2:32-36, 3:54-61. The RFID tag-skin patch combination can include a plurality of sensors used for various diagnostic applications. *Id.*, 6:35-40. The

technology described in the patent can perform any number of different diagnostic tests on a subject and includes remote processing by the wireless RFID reader (such as a cell phone). *Id.*, 5:42-43, 7:34-36. The technology allows individuals with diabetes to easily monitor their blood glucose (or cardiac function, or body temperature), directly with their cell phone. *Id.*, 6:14-18, 8:25-26, 8:64-9:3, Fig. 4.

The RFID tag includes an ID unique to the RFID tag. *Id.*, 7:43-45. Not only can this ID be used to identify the *type* of sensor used in the tag, but because the ID is unique to the specific RFID tag, it facilitates downloading information related to the particular sensor in the tag. *Id.*, 11:49-60 (“downloading the correct sensor data tables from a remote location”). The ’307 Patent claims recite this sensor unit unique ID. *Id.*, claim 1 (“A radio frequency (RF) addressable diagnostic sensor unit comprising: ... a unique identification ID number.”) (limitation “[1c]”).

B. Procedural History

Petitioners filed an IPR petition on January 16, 2024. Paper 2 (“Pet.”). Petitioners’ first two grounds were based on Bandy (Ex-1005), alone, or in combination with Heller (Ex-1016). Petitioners’ third ground was based on combining Beck (Ex-1007), Heller (Ex-1016), and Lovejoy (Ex-1009).

Beck describes a system including a medical device that communicates with a client computing device. Beck, ¶¶14, 27. In one embodiment, the medical device

is “a glucose meter...which are generally operable to measure blood glucose levels of blood applied to test strips.” *Id.*, ¶34.

Heller discloses an analyte monitoring system using an implantable sensor for the *in vivo* determination of a fluid's analyte (e.g., glucose) concentration. Heller, 1:3-7, 8:12-14. Heller's system includes an on-skin sensor control unit that connects to, or includes, a sensor (*id.*, 3:30-4:16), and a separate receiver/display unit, which receives wireless transmissions from the on-skin sensor unit (*id.*, 11:30-32, 70:1-5).

Lovejoy describes a wearable monitor that provides sensor information regarding an individual's occupational exposure to hazards, such as a radiological, chemical or other toxic agent in the surrounding environment. Lovejoy, Abstract, 1:25-28. Lovejoy's sensor module is used with an electronic monitor adapted to monitor various types of exposures, e.g., over the lifetime of a worker. *Id.*, 2:28-31, 6:16-19. Lovejoy further describes base stations for recharging and reading data from the personal monitors, and antennae for use in geolocating the monitors. *Id.*, 4:38-41.

Both Bandy and Lovejoy are listed on the '307 Patent face among the “References Cited” (Ex-1001, 2), and the examiner initialed the applicant's Information Disclosure Statement at their corresponding rows, indicating that she considered the references (Ex-1002, 291, 383). Both references are also discussed and incorporated by reference in the specification of the '307 Patent. Ex-1001, 5:7-

11, 6:10-13, 17:21-24, 18:3-43. Dr. Peeters, the '307 Patent inventor, is also an inventor on Bandy and Lovejoy. Bandy, Face; Lovejoy, Face.

In the POPR (Paper 7), PO explained Bandy's disclosure on which Petitioners relied was *not* prior art, and that the Examiner considered both it and Lovejoy during prosecution. POPR, 20-24, 39-43. PO explained these flaws affected every Petition ground, and so the Board should deny institution. *Id.*, 43. The Board, however, instituted review without even addressing Bandy's prior-art status. I.D. (Paper 10), 44.

On the merits, Petitioners limited their argument regarding limitation [1c] to a single short paragraph, asserting it was met by Beck's disclosure of "identification codes" or "serial numbers" in "medical device[s]." Pet., 51. *Petitioners never asserted that Heller disclosed any "unique identification ID number."*

On July 15, 2025, the Board issued a Final Written Decision, and again failed to resolve whether the relevant portions of Bandy were available as prior art against the '307 Patent. That issue was dispositive of two of Petitioner's three grounds and, because the Board failed to resolve the issue at institution, the parties had continued to brief it throughout the IPR. Skipping past that issue, the Board found—based on erroneous factual determinations and arguments not made by Petitioners—that claims 1-3, 5, 9, and 10 of the '307 Patent were unpatentable based on the Beck-Heller-Lovejoy combination. FWD, 49.

In response to PO's argument that the glucose meter in Beck—limited to using test strips for sensors—was incompatible with Heller's system, where the sensors were part of an on-skin sensor unit, the Board found that "Heller specifically states that it aims to improve glucose monitoring systems which use test strips." *Id.*, 26. According to the Board, the Beck-Heller combination "improves Beck's glucose meter based on Heller's glucose monitoring system teachings." *Id.* The Board did not explain whether this combination incorporates Heller's on-skin sensor control unit, receiver/display unit, or both.

The Board rejected PO's argument that Beck's disclosure of a serial number for a *medical device*—the disclosure Petitioners relied on—did not teach a unique identification ID number of a *sensor unit*, as required by limitation [1c]. *Id.*, 34.

Notwithstanding that the claimed diagnostic sensor unit comprises a "unique identification ID number," the Board inexplicably reasoned that the "claim does not include language specifying what the 'unique identification ID number' identifies." *Id.*, 35. The Board went further, concluding that identification of the *type* of sensor, but not the individual sensor unit, would meet the limitation. *Id.*

Based on the erroneous findings regarding, at least, limitation [1c], the Board found the challenged claims unpatentable.

IV. ARGUMENT

A. The Director should vacate the FWD and terminate the proceeding on discretionary grounds.

PO requests the Director vacate the Final Written Decision and institution. This IPR never should have been instituted in the first place because: (1) the patent is 14 years old, (2) all three grounds relied upon a reference (Bandy and/or Lovejoy) that was squarely before the examiner and discussed in the patent itself, and (3) two of three grounds are based on a reference, Bandy, that was not available prior art against the '307 Patent. Notably, if that Board had properly addressed Bandy's prior art status at institution, it could have considered whether the petition should have been discretionarily denied because the majority of grounds were deficient.

First, the '307 Patent issued June 28, 2011. Ex-1001, Cover. The advanced age of this patent creates strong settled expectations for PO. *See, e.g., Analog Devices, Inc. v. Number 14 B.V.*, IPR2025-00550, -551, Paper 10 (July 16, 2025) (Director denying institution where “the challenged patents have been in force for more than 13 years, creating strong settled expectations”); *Kingston Tech. Co. v. Vervain, LLC*, IPR2025-00614, -616, Paper 12 (July 16, 2025) (same for 10 years); *BOE Tech. Gr. Co. v. Optronix Sci. LLC*, IPR2025-00238, -239, Paper 11 (July 29, 2025) (“strong settled expectations” for twelve year-old patents).

Second, the Board's institution decision was based on the Beck-Heller-Lovejoy combination. I.D., 32-33. Lovejoy was not only identified in an IDS

(initialed by the Examiner) (Ex-1002, 291), it was expressly discussed in the background of the patent and incorporated by reference in its entirety three separate times. Ex-1001, 6:10-13, 17:21-24, 18:38-43. This is not surprising because the '307 Patent inventor (Dr. Peeters) was also an inventor on Lovejoy.

Bandy was also before the Examiner during prosecution, both in an IDS and explicitly (and repeatedly) discussed in and incorporated into the specification. Ex-1002, 383; Ex-1001, 5:7-11, 5:16-19, 9:28-33, 14:52-58.¹ Thus, while PO maintains that Bandy was not available as prior art for the reasons discussed below, the Board should have denied institution at least because Bandy had already been considered during prosecution, more than a decade earlier.

Because Lovejoy and Bandy were previously presented to the Office, the Board should have exercised its discretion to deny institution under §325(d). Bandy was the sole reference for Ground 1 and the primary reference for Ground 2. And while Lovejoy is only *part* of the Beck-Heller-Lovejoy combination (Ground 3), it was Petitioner's choice to rely upon Lovejoy as part of its proffered ground and the Board's decision was necessarily based, in part, on that reference. *See, e.g.*, I.D., 28-30 (relying on Lovejoy in connection with claim 1, the sole challenged independent

¹ U.S. Application 10/761,362 ultimately issued as Bandy.

claim). The Board should never have instituted this IPR based on references that were expressly discussed in and incorporated into the specification.

Finally, the weakness of Petitioner's first two grounds should have resulted in denial of institution. Petitioner failed to meet its burden to demonstrate that Bandy was prior art "by another" under 35 U.S.C. §102(e). *See Google LLC v. IPA Techs. Inc.*, 34 F.4th 1081, 1086 (Fed. Cir. 2022). As confirmed by sworn declarations from the two named inventors of the Bandy reference—Dr. Bandy and Dr. Peeters—the portions of Bandy upon which Petitioner relied were *all* contributed by Peeters, the '307 Patent's sole inventor. Ex-2001; Ex-2002. The Institution Decision candidly acknowledged that "[t]he statements in the Declarations are favorable to Patent Owner's arguments," but noted that Petitioner could further develop the factual record. I.D., 36. The Board thus declined to follow previous Board decisions denying institution after determining that a reference should be disqualified for having the same inventive entity based on inventor declarations. *See, e.g., Miltenyi Biomedicine GmbH v. Tr. of the Univ. of Pa.*, IPR2022-00853, Paper 11, 30-33 (Oct. 11, 2022) (denying institution where "we find it unlikely that Petitioner can demonstrate that Dr. Bagg's contribution to Porter constitutes the work of another"). Contrary to the Board's reasoning, there must be some sensible limit on the number of times and years over which PO must continually get past the same reference discussed in the background of the '307 Patent. It has been *over twenty years* since the application

that matured into the '307 patent was filed with its discussion of Bandy (and Lovejoy). Yet, as of this very filing, PO is still being forced to argue about the availability of that reference.

The Board explained that “[h]ere, we have decided to institute a trial on Petitioner’s Beck-Heller-Lovejoy ground, and so we institute a trial as to all claims and grounds in the Petition.” I.D., 37-38; *see id.*, 32-33. Despite the fact that PO was forced to respond to the Bandy grounds in detail in its POR, the FWD did not reach either of the Bandy grounds. FWD, 49 & nn.17–18

Thus, because the Institution Decision was based on just one of three grounds and all three grounds included a reference that was before the examiner and discussed in the patent, the Board should have used its discretion to deny institution, especially given the advanced age of the patent and PO’s settled expectations.

B. The Director should vacate the FWD, and remand for a finding that Petitioners have failed to show any claim is unpatentable.

Even if the Director disagrees that this IPR should not have been instituted, the Director should still vacate and remand the FWD for the numerous erroneous findings regarding limitation [1c]: “unique identification ID number.”

1. The Board erroneously found that the “unique identification ID number” need not be unique or identify anything.

At the outset, the Board was wrong that PO argued “the claims require the ‘unique identification ID number’ to identify a specific sensor.” FWD, 35. Instead,

PO consistently asserted that the claims require the “unique identification ID number” to identify the sensor *unit*, not the sensor *element*. POR (Paper 17), 12 (noting Beck does not have “a ***sensor unit that has a unique sensor ID***”) (emphasis in original), 52 (noting claim requires unique number for sensor unit). Even *Petitioners’ counsel* recognized during the oral hearing that PO’s position was “that the unique identification ID number identifies the sensor *unit*.” Tr. (Paper 44), 23:6–8 (emphasis added). PO’s counsel confirmed that position in response to a question by Judge Hoang. *Id.*, 40:20–26 (“JUDGE HOANG: ... so you are reading that this unique identification number is unique to the sensor unit rather than to the sensor element recited in the claim? MR. PEKAREK KROHN: I think that’s right.”).²

Given its mischaracterization of PO’s argument, the Board’s rejection of that argument does not resolve the dispute between the parties. The Board’s reasoning that “the ‘unique identification ID number’ is *not* for one specific sensor,” (FWD, 35) is irrelevant because PO never argued the sensor unit was limited to a single sensor element or the “unique identification ID number” identified a sensor element. PO’s argument was always based on *what* the “unique identification ID number”

² To the extent PO referred to “sensor” in briefing, that was simply shorthand for “sensor unit,” and not “sensor element.” And if there was any ambiguity, that was cleared up at the oral hearing.

applied to—the claimed sensor unit, regardless of whether it had one or more sensor elements.

After rejecting a strawman argument of its own making, the Board found that the “claim does not include language specifying what the ‘unique identification ID number’ identifies.” *Id.* That was plainly wrong. The claim’s preamble recites a “radio frequency (RF) addressable diagnostic sensor unit comprising,” followed by a list of elements, including “a unique identification ID number.”

The Board used an additional erroneous finding, that “the unique ID can identify the *type* of sensor used” (*id.* (emphasis in original)), to support its erroneous finding that the “unique identification ID number” does not identify the sensor unit. In other words, according to the Board, the “unique identification ID number” can be repeated for every sensor of that type, i.e., it need not actually be unique to (and identify) the sensor unit.

Beyond making no sense, these findings were explicitly disavowed by Petitioners. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 993 (Fed. Cir. 2017) (finding error in Board’s analysis that differed from position raised in petition); *see also In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (finding the PTO’s authority “is not so broad that it allows the PTO to raise, address, and decide unpatentability theories never presented by the petitioner and not supported by record evidence”). As Petitioners’ counsel stated at the oral hearing,

the unique identification ID number “doesn’t just identify the type of medical device or the type of medical sensor: it identifies the specific device.” Tr., 75:23-25; *see id.*, 76:4-13 (“But I want to be clear; we are not taking the position that ... Beck’s medical device serial number is non-unique. Of course, it’s unique, that it uniquely identifies the medical device.”). The Board wrongly found otherwise, contrary to Petitioners’ position.

2. The Board erroneously found that the combination of Beck, Heller, and Lovejoy included a diagnostic sensor unit with a “unique identification ID number.”

The Board’s failure to recognize that the “unique identification ID number” is a unique number identifying the sensor unit, led to its erroneous finding that Beck discloses limitation [1c]. FWD, 36. Once those flawed premises are rejected, however, it is clear that Beck fails to teach that limitation.

Petitioners failed to show the Beck-Heller-Lovejoy combination teaches a sensor unit with a unique identification ID number. Petitioners relied on Beck’s “identification codes” and “serial numbers” for generic medical devices—not any sensor units—to meet limitation [1c]. Pet., 51. The Board failed to address this fatal flaw in Petitioners’ ground. While it acknowledged PO’s explanation that Beck’s glucose meter lacks sensor elements, which are part of the separate test strips (FWD, 25), the Board reasoned that PO’s assertions “are contradicted by Beck which states that its serial number specifically identifies its described medical device which

‘includes a glucose meter’” (*id.*, 25 (citing Ex-1007, ¶¶34, 55)). Far from a contradiction, that supports PO’s position: Beck refers to the glucose *meter*—and not the test strips comprising sensor elements—as a medical device. And nowhere does Beck disclose anything containing a sensor element (a requirement to be a sensor unit) including a serial number or other unique identification number.

Further, Petitioners failed to show a reasonable expectation of success. “The reasonable expectation of success requirement refers to the likelihood of success in combining references *to meet the limitations of the claimed invention.*” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016) (emphasis added); *see also Pers. Web Techs.*, 848 F.3d at 994.

Again, the Board failed to address this issue. Regarding reasonable expectation of success, the Board focused on Dr. Sarrafzadeh’s testimony that “Heller’s medical device is ‘attach[ed] or affix[ed] that to the skin of a user’” and “‘you could use that exact same thing with the Beck’s system’” as well as his explanation for affixing Heller’s on-skin sensor unit to the skin of a patient. FWD, 32 (citing Ex-2011, 90:10–14, 91:19–25). But Heller, which has both an on-skin sensor unit and separate receiver/display unit, does not disclose its on-skin sensor unit (or receiver/display unit) having a “unique identification ID number,” and Petitioners never claim it does, relying solely on Beck (which does not disclose any component that includes a sensor unit with a unique identification ID number).

The Board's decision here suffers from the same problem the Federal Circuit addressed in *Personal Web Technologies*: “the Board nowhere clearly explained, or cited evidence showing, *how* the combination of the two references was supposed to work.” 848 F.3d at 994 (emphasis in original). Instead, the Board improperly relied on a disclosure from Beck (serial numbers for medical devices), to find a “unique identification ID number” in a component of Heller.

To the extent the Board found a component of Heller discloses a “unique identification ID number” in the Beck-Heller-Lovejoy combination—and it does not appear the Board made such a finding in the absence of the Board's explanation of how the combination would work—this is also problematic. Petitioners only asserted Beck—and not Heller—met limitation [1c]. Pet., 51; *Pers. Web Techs.*, 848 F.3d at 993 (finding error where the Board found disclosure in reference not mentioned in relevant portion of petition).

Neither Petitioners nor the Board showed that the Beck-Heller-Lovejoy combination includes a sensor unit with a “unique identification ID number” that identifies the sensor unit and is unique to that sensor unit.

V. CONCLUSION

Patent Owner therefore respectfully requests that the Director withdraw institution or vacate and remand the FWD, with instructions to find Petitioners have failed to show any challenged claim is unpatentable.

Dated: August 14, 2025

/ David Pekarek Krohn /

PERKINS COIE LLP
33 East Main Street,
Suite 201
Madison, WI 53703-3095
Telephone: (608) 663-7460
Fax: (608) 663-7499

Respectfully submitted,

Lead Counsel
David Pekarek Krohn, Reg. No. 69,443

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served a true and correct copy of the foregoing: PATENT OWNER'S REQUEST FOR DIRECTOR'S REVIEW by email to the electronic service addresses for Petitioners on the date indicated below:

Michael A. Morin, michael.morin@lw.com

Inge A. Osman, Inge.Osman@lw.com

Dated: August 14, 2025

/ David Pekarek Krohn /

PERKINS COIE LLP
33 East Main Street,
Suite 201
Madison, WI 53703-3095
Telephone: (608) 663-7460
Fax: (608) 663-7499

Respectfully submitted,

Lead Counsel
David Pekarek Krohn, Reg. No. 69,443