

Filed on behalf of: Abbott Laboratories and Abbott Diabetes Care Inc.

Entered: August 21, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABBOTT LABORATORIES and
ABBOTT DIABETES CARE INC.,
Petitioner,

v.

ALTIVERA, LLC,
Patent Owner.

Case IPR2024-00425
Patent 7,969,307 B2

**PETITIONER'S RESPONSE TO PATENT OWNER'S
REQUEST FOR DIRECTOR REVIEW**

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1001	U.S. Patent No. 7,969,307 B2 (“’307 patent”)
1002	File History of U.S. Patent No. 7,969,307 B2 (“’307 FH”)
1003	Declaration of Majid Sarrafzadeh (“Sarrafzadeh Decl.”)
1004	<i>Curriculum Vitae</i> of Majid Sarrafzadeh
1005	U.S. Patent No. 7,148,803 B2 (“Bandy”)
1006	U.S. Utility Patent Application Transmittal for U.S. Patent No. 7,148,803 B2 (“As-Filed Bandy Application”)
1007	U.S. Patent Application Publication No. US 2002/0178126 A1 (“Beck”)
1008	RESERVED
1009	U.S. Patent No. 6,031,454 (“Lovejoy”)
1010	Assignment of U.S. Patent Application No. 10/761,362 from Peeters to Altivera L.L.C., executed Dec. 2, 2005
1011	Assignment of U.S. Patent Application No. 10/761,362 from Peeters to Altivera, LLC, executed Feb. 10, 2006
1012	Assignment of U.S. Patent Application No. 10/761,362 from Bandy to Symbol Technologies, Inc., executed Feb. 11, 2006
1013	RESERVED
1014	Gentag’s Response to Abbott’s Initial Invalidity Contentions: Response to Exhibit 1 Regarding Invalidity Based on U.S. Patent No. 7,148,803 “Radio frequency identification (RFID) based sensor networks” (“Bandy”), <i>Gentag, Inc. v. Abbott Laboratories</i> , No. 1:23-cv-00310 (N.D. Ill. Aug. 15, 2023) (“Gentag Invalidity Resp.”)
1015	U.S. Patent No. 6,987,965 B2 (“Ng”)

Ex.	Description
1016	World Intellectual Property Organization, International Publication No. WO 02/058537 A2 (“Heller”)
1017	Third Report & Order, <i>In re Revision of the Comm’n’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys.</i> , CC Docket No. 94-102, 14 FCC Rcd. 17388, 1999 WL 795989 (FCC adopted Sept. 15, 1999; released Oct. 6, 1999), http://standards.fcc.gov/gov_affairs/fcc_filings/documents/e911rand.pdf (“FCC Report”)
1018	U.S. Patent No. 6,002,344 (“Bandy-344”)
1019	U.S. Patent No. 7,797,367 B1 (“Gelvin”)
1020	U.S. Patent No. 6,416,471 B1 (“Kumar”)
1021	U.S. Patent No. 6,978,182 B2 (“Mazar”)
1022	U.S. Patent No. 6,720,887 B1 (“Zunti”)
1023	U.S. Patent Application Publication No. 2003/0229723 A1 (“Kangas”)
1024	U.S. Patent Application Publication No. 2002/0165443 A1 (“Mori”)
1025	RESERVED
1026	NEWTON’S TELECOM DICTIONARY (18th ed. 2002) (excerpted)
1027	U.S. Patent No. 7,446,646 B2 (“Huomo”)
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Petitioners Abbott Laboratories and Abbott Diabetes Care Inc. (“Petitioner” or “Abbott”) submit this Response to Patent Owner’s Request for Director Review (“Request,” Paper 47). Patent Owner’s (“PO”) requested relief, asking that the Board vacate the Final Written Decision and reverse its Institution Decision, violates the Office’s directives and is unsupported by the law and facts. It should be denied.

I. Legal Standard

Requests for Director Review of a Board’s final decision “shall be limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” Director Review Process § 2.B. “[A] request for Director Review of a final decision is *not an opportunity to raise issues related to the Board’s decision on institution*, for example, whether a petition meets the reasonable likelihood standard *or how the Board exercised the Director’s institution discretion.*” *Id.* (emphasis added).

II. Background

A. Overview of the ’307 Patent (Ex. 1001)

An overview of the ’307 patent is provided in the Final Written Decision and Petition. *See* Final Written Decision (“FWD,” Paper 46), 4-7, Pet. (Paper 2), 2-3.

B. Procedural History

Petitioners filed their IPR petition on January 16, 2024, raising three grounds of unpatentability. Paper 2, 1. Ground 1 alleged obviousness over Bandy (Ex.1005), and Ground 2 combined Bandy with Heller (Ex.1016). *Id.* Ground 3 asserted

obviousness over Beck (Ex.1007), Heller, and Lovejoy (Ex.1009). *Id.* The Board instituted IPR on all challenged claims and all grounds. Institution Decision (“ID,” Paper 10), 2. After a full trial, the Board found all challenged claims unpatentable based on Ground 3, Beck-Heller-Lovejoy. FWD, 49.

III. Argument

A. Discretionary Denial of Institution is Unwarranted

PO's request to vacate the institution decision at this stage is an express violation of *multiple* Office directives. First, the “settled expectations” factor does not apply to this proceeding because the PO preliminary response was filed long ago. Second, the Director Review Process is explicitly “not an opportunity to raise issues related to the Board’s decision on institution” including the Board’s exercise of “the Director’s institution discretion.” Director Review Process § 2.B. PO's arguments fail for multiple other reasons also.

1. Patent Owner’s “Settled Expectations” Argument Fails Procedurally and Substantively

PO first argues that the “advanced age” of the '307 patent “creates strong settled expectations for PO” and cites recent decisions by the Director denying institution based in part on the age of the challenged patent. Request, 7. PO's argument fails procedurally and on the merits.

First, the “settled expectations” factor does not apply. The March 26, 2025 memorandum titled “Interim Processes for PTAB Workload Management”

(“Process Memorandum”) introduced the “settled expectations” factor. However, the FAQ posted by the Office on April 25, 2025 to further explain the Process Memorandum (“Interim Processes FAQ”) confirms the “settled expectations” factor does not apply to this case.¹ The FAQ’s item 5 plainly states that, if a POPR was filed before the Process Memorandum issued, “*a Board panel will proceed as it would have before the Process Memorandum issued....* The panel *will not address any new factors outlined in the Process Memorandum, nor consider a request for rehearing based on those new factors.*” See Interim Processes FAQ (emphasis added). PO’s Preliminary Response (“POPR,” Paper 7) was filed April 25, 2024, making the Process Memorandum and the factors detailed therein inapplicable here. See also Process Memorandum, 3 (applying processes to IPR proceedings where deadline for preliminary response has not passed). Accordingly, the “settled expectations” factor does not apply to this proceeding, and PO’s request that the Director consider the same at this late stage violates the Office’s express guidance.

This obstacle is insurmountable. But PO’s request to apply the “settled expectations” analysis also fails on its merits. The “settled expectations” factor does not exist in a vacuum and does not, on its own, control the Director’s discretionary decision under the new process. The Director’s decisions, including in PO’s cited

¹ The FAQ was superseded August 13, 2025, but remains relevant.

cases, confirm the Director applies a “holistic assessment” and balances the challenged patent’s age against whether “*inter partes* review is an appropriate use of Board resources.” *See, e.g., Analog Devices, Inc. v. Number 14 B.V.*, IPR2025-00550, -551, Paper 10 (PTAB July 16, 2025) (cited in Request, 7); *see also, e.g., Anthony Inc. v. Controltec, LLC*, IPR2025-00559, -00636, Paper 9 at 2-3 (PTAB July 16, 2025) (applying “holistic assessment” and referring to the Board petitions of 18 and 17 year old patents based on petitioner’s showing of material error).

Under a holistic assessment, *inter partes* review **was** an appropriate use of Board resources, because the Board found unpatentability of every challenged claim within its statutory one-year mandate. *See generally* FWD; Process Memorandum, 3 (Director considers Board’s ability to comply with statutory deadline). Moreover, even if the “settled expectations” factor were applicable, “the parties” expectations must be considered (Process Memorandum, 2), and Petitioner has a settled expectation that the Office will not discard its diligent effort during trial. Additionally, any “settled expectations” PO may have had were upended by the Board’s detailed FWD finding unpatentability.

Finally, it would run counter to the Process Memorandum’s purpose to vacate the FWD and ID, as PO’s requested relief would undo the Board’s thorough evaluation of the parties’ arguments and evidence in this proceeding and would do nothing but waste the Board’s resources. An important purpose of discretionary

denials is to save the Board the time and resources necessary to hear the full case on the merits in appropriate cases; that purpose is moot once the full trial has already occurred, as here. Allowing PO's argument would also upend numerous other final decisions and pending instituted IPRs, wasting additional resources. The Office's resources have been used appropriately to evaluate and establish the claims' unpatentability. PO's Request for vacatur of the FWD and ID should be denied.

2. Patent Owner's § 325(d) Argument Was Waived and Also Fails Substantively

PO next argues that "the Board should have exercised its discretion to deny institution under §325(d)" because "Lovejoy and Bandy were previously presented to the Office." Request, 7-9. In addition to violating the Office's prohibition on institution-related arguments at this stage, PO's argument requesting Director reconsideration of the Board's § 325(d) decision was waived, and the Director need not consider it. In any event, that argument also fails on the merits.

In its POPR, PO contended that Bandy and Lovejoy were before the examiner during prosecution, and requested discretionary denial based on § 325(d). *See* POPR, 39-43. In its ID, after substantively evaluating the Petition's grounds, the Board addressed PO's § 325(d) arguments applying the *Advanced Bionics* framework. *See* ID, 42-44 (*citing Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential)). The Board first noted that "Petitioner's challenge over the

combination of Beck, Heller, and Lovejoy counsels us not to discretionarily deny institution” because “Beck and Heller were not before the Office” and Lovejoy was only relied upon “for a sliver of the claim.” ID, 43-44. Accordingly, the first part of *Advanced Bionics* was not satisfied. *See id.*

The Board went further, and considered the second part of *Advanced Bionics*, agreeing with Petitioner that “the Office erred in a manner material to the patentability of challenged claims” by not applying the Beck, Heller, and Lovejoy combination during prosecution. ID, 44. Based in part on Petitioner’s specific allegations of Office error, and in combination with the Board’s conclusion that Petitioner had shown a reasonable likelihood of prevailing on the Beck, Heller, and Lovejoy ground, the Board instituted trial, consistent with § 314(a). *See id.*

If PO disagreed with the Board’s § 325(d) findings and desired the Director’s review, it should have requested Director Review of the ID. It did not. PO’s rehashed § 325(d) request is thus waived. *See* 37 CFR §§ 42.71(d)(1) (14-day deadline for rehearing request for institution decisions), 42.75(c)(1) (applying same deadline for Director Review requests). PO did not request waiver of the deadlines. Nor does PO cite authority to support its argument that the Director may review, after final written decision, the Board’s institution determination; indeed, the Director Review Process guidance says otherwise. PO provides no reason why the Director should excuse its waiver.

Regardless, as shown by the Board's multiple findings in the Final Written Decision against PO's arguments, in favor of Petitioner's strong unpatentability evidence and arguments: (1) the Board's finding (ID, 44) that the Office erred during prosecution was correct; (2) the '307 patent's claims should have been reviewed in light of the teachings of the Beck, Heller, and Lovejoy combination; and (3) the combination renders obvious each and every challenged claim limitation. Accordingly, the Board's ID findings of a reasonable likelihood of prevailing and Office error in examination were correct, and those determinations should stand.

For at least these reasons, the Director should deny PO's Request.

3. Patent Owner's Argument Regarding the Bandy Grounds Fails Legally

As its last-ditch effort, PO contends the "weakness of Petitioner's first two grounds should have resulted in denial of institution." Request, 9. PO did not request Director review of the ID, so this argument is also waived (*see supra* § III.A.2), and it also fails because it does not apply the correct legal framework.

An institution decision "simply requires [a decision] whether the petitioner is likely to succeed on 'at least 1' claim." *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1356 (2018). And § 314(a) "anticipates a regime where a reasonable prospect of success on a single claim justifies review of all." *Id.* The Board applies the statutes and rules consistent with *SAS* such that a determination of a reasonable likelihood of success on one claim and one ground is sufficient to institute IPR. *See, e.g.*, ID, 32-

33; *Guidance on the impact of SAS on AIA trial proceedings*, (<https://www.uspto.gov/patents/ptab/trials/guidance-impact-sas-aia-trial>) (“If the PTAB institutes a trial, the PTAB will institute on all challenges raised in the petition.”); *Alcatel-Lucent USA Inc. v. Oyster Optics, LLC*, IPR2018-00070, Paper 27 at 4 (PTAB Aug. 31, 2018) (“The Supreme Court’s interpretation of 35 U.S.C. § 314(a), upon which 37 C.F.R. § 42.108(c) was promulgated, does not require a claim-by-claim and ground-by-ground analysis in order to institute” IPR); *Seoul Semiconductor Co., Ltd. v. Document Security Systems, Inc.*, IPR2018-00265, Paper 24 at 3-4 (PTAB Oct. 1, 2018) (citing *SAS* and finding no “persuasive justification for why we should interpret our Rules to require an evaluation and analysis of every claim and every ground.”). The Board properly followed the law in instituting IPR after finding the Beck-Heller-Lovejoy ground demonstrated a reasonable likelihood of prevailing as to all challenged claims. *See* ID, 32; *see also* at 33 (applying *SAS*).

PO’s repetition of its pre-institution § 102(e)-based arguments does not compel otherwise. Although the Board helpfully provided “guidance to the parties for the upcoming trial ... as to [the] two additional grounds” (i.e., the Bandy-based grounds), it was under no obligation to do so. ID, 33. Regardless, while the Board acknowledged, at that stage, *some of* PO’s evidence was “favorable to Patent Owner’s arguments,” it expressly found that “other evidence of record suggests that this dispute would benefit from additional fact-finding.” *Id.* at 36. The Board went

on to note that PO's declarants had not been cross-examined, and particular pieces of record evidence suggested "certain relied-upon portions of Bandy included important contributions from another." *Id.* at 37. This evidence "potentially call[ed] into question that another person contributed to features related to the relied-upon portions of Bandy" such that Bandy would still qualify as § 102(e) prior art. *Id.* The Board properly followed *SAS* in instituting IPR and allowing the parties (including PO) to further develop the record on all grounds, including the Bandy-based ground, and PO does not show this was erroneous.

PO again cites *Miltenyi Biomedicine* to support its arguments, alleging the Board did not "follow previous Board decisions," but that case is inapposite. Request, 9 (*citing Miltenyi Biomedicine GmbH v. Tr. of the Univ. of Pa.*, IPR2022-00853, Paper 11 (Oct. 11, 2022)); *see also* Paper 8 (Petitioner's Reply to POPR), 7 (addressing *Miltenyi*). In *Miltenyi*, one ground relied upon a reference (Porter), which named the four inventors of the challenged patent as authors, along with another individual, Dr. Bagg. In that institution decision, the Board found no "credible factual dispute as to Dr. Bagg's contribution to Porter" such that the portion of Porter relied upon by the petitioner was only disclosed by the inventors, and therefore was not "by another" and not prior art. *Miltenyi*, Paper 11 at 30-33.

But here, the Board found there was a credible dispute, which merited further fact-finding. *See ID*, 36-37. Additionally, in *Miltenyi*, the Board did not stop after

evaluating the Porter ground; rather, the Board evaluated the other three grounds, finding the petitioner had not demonstrated a substantive likelihood of success as to two of the grounds and finding the last ground to fail under *Advanced Bionics Miltenyi*, Paper 11 at 33-48. In contrast, the Board here determined that Petitioner's Beck-Heller-Lovejoy ground showed a reasonable likelihood of success sufficient to institute trial and found discretionary denial under § 325(d) inappropriate, and thus properly instituted trial on all claims and grounds, consistent with *SAS*.

Accordingly, the Director should deny further review of the FWD and/or ID.

B. Patent Owner's Attack on the Substance of the Final Written Decision fails

The Board correctly determined that Beck discloses the “unique identification ID number” required by limitation 1[c]. FWD, 34-36. PO's Request recasts old arguments in an attempt to manufacture issues where none exist. PO's Request boils down to its assertion that Beck's medical device is not a “sensor unit” including a “unique identification ID number.” As the Board found, this is wrong. PO fails to identify any error in this determination, and Director Review is not warranted.

1. The Board Correctly Interpreted “unique identification ID number”

The Board correctly interpreted the claimed “unique identification ID number” as identifying the claimed sensor unit, not a sensor element. FWD, 34-36. Ultimately, PO's Request complains that the Board did not interpret limitation 1[c]

to require a “sensor unit comprising ‘a unique identification number’” that is unique. Request, 1; *see also* 12 (incorrectly contending the Board found the “unique identification ID number” did not need to be unique). But the Board expressly did so: at the outset, the Board recognized that there was no dispute between the parties that the “unique identification ID number” had to uniquely identify *something*, and that *something* is the sensor unit. FWD, 34. Indeed, the Board explained that “Patent Owner does not contest that Beck’s serial number uniquely identifies a medical device in Beck.” *Id.* The Board thus properly determined that the dispute between the parties centered on PO’s argument that claim 1 requires “unique identification ID numbers ... of sensors (as opposed to medical devices)” (FWD, 34-35), which the Board took to mean PO was requiring unique identification ID numbers of *sensor elements* based on PO’s briefing.

Starting with the claim language, the Board found that there is nothing “specifying what the ‘unique identification ID number’” identifies. *Id.* at 35. The Board was right: the claim recites that the “diagnostic sensor unit” comprises a “unique identification ID number” but provides no more guidance on what that ID number must identify. The Board explained that the “unique identification ID number” in the claim is “a component of the ‘diagnostic sensor unit’ (recited in the preamble) which comprises ‘at least one sensor element’ as well as a number of other elements such as ‘one antenna,’ ‘a controller,’ and ‘a memory.’” *Id.* (*citing* Ex.1001,

19:31-41). It correctly explained that, if anything, the claim language “suggests that the ‘unique identification ID number’ is *not* for one specific sensor element because the claim recites ‘at least one sensor element,’ suggesting multiple sensor elements could be encompassed within the scope of the claim.” FWD, 35.

Further, the Board noted that the Specification “supports this understanding” because it provides an example “where IDs are used to identify different *types of sensors*.” *Id.* (citing Ex.1001, 15:24-26 (“many different sensors can be used with a single RFID chip, therefore allowing identification of specific types of bacteria”)) (emphasis original). In addition, the Board noted that the “Specification explains that the unique ID can identify the *type* of sensor used, rather than identifying any specific sensor.” FWD, 35 (emphasis original). To be clear, the Board explained that the unique ID can identify the type of sensor *element*; it did not hold the same to be true for the sensor unit. The Board recognized that the unique identification ID number had to uniquely identify the sensor *unit*. FWD, 34. At base, nothing in the patent’s claims or specification requires that the “unique identification ID number” uniquely identify a sensor element, as PO argued.

2. The Board Correctly Addressed The Dispute Between The Parties

While PO now contends the Board created a “strawman” with “irrelevant” reasoning, the Board properly addressed PO’s arguments made during the proceeding. Request, 11-12. The record is replete with PO’s allegations that Beck’s

medical device identification codes and serial numbers do not meet limitation 1[c] because they do not identify individual sensor elements. *See, e.g.*, POR, 55 (“Petitioner does not assert, and Beck does not disclose, that each individual test strip, or any other *sensor* for the glucose meter, has a unique identification ID number.”), 56 (“[N]owhere does Beck disclose that the electrodes/leads (*sensors*) each have a unique identification ID number.”) (emphases added); FWD, 34-35.

PO tries to retroactively recast these arguments as asserting that the unique identification ID number must identify a sensor *unit* as opposed to a sensor *element*. Request, 10-12. But the claimed sensor units include, for instance, at least one sensor element, at least one reference sensor element, a sensor interface, at least one antenna, a substrate, etc. Ex.1001, cl. 1. Neither glucose strips nor electrode/leads can be the claimed sensor units—the Board correctly understood PO to be referring to sensor elements. Indeed, even now, PO cannot keep its story straight, arguing Beck does not disclose “anything containing a sensor element ... including a serial number or other unique identification number.” Request, 14. The Board should not be faulted for resolving the dispute PO raised.

3. The Board Correctly Found that the Combination of Beck, Heller, and Lovejoy Taught the Disputed Limitation

Getting to the core of the dispute, the Board correctly found that Beck teaches a sensor unit with a “unique identification ID number.” FWD, 34-36. Accordingly, Petitioners amply proved that Beck-Heller-Lovejoy satisfies the same. PO advances

two arguments to the contrary. Both fail.

First, PO contends that Beck's "'identification codes' and 'serial numbers'" for its medical device are not "unique identification ID number[s]" as limitation 1[c] requires. Request, 13-14. This assertion stems from PO's mistaken premise that Beck's medical device cannot be the claimed "sensor unit," because it allegedly does not include sensor elements. Request, 13. The Board rightly rejected this argument.

The Board explained that the factual assertions upon which PO's argument is based—that Beck's medical device does not include sensor elements (as recited in limitation 1[a])—were "contradicted by Beck." FWD, 33-34 (citing Ex.1007 ¶¶ 34, 35). The Board cited to Beck's teachings that its medical device "could be implemented to analyze other biological/physiological parameters or conditions such as bodily fluids or bodily functions (e.g., blood, urine, saliva), bodily signals (e.g., electrocardio-signals, brain waves, blood pressure waves), and/or other bodily stimuli (e.g., respiration)." Ex. 1007 ¶ 34; *see also id.* ¶ 35 (medical device obtains "measurement data indicative of a biological/physiological condition"). To perform such analysis, Beck's device necessarily must include sensor elements. Pet., 49-50.

Further, the Board found, "in the alternative," that "even if Beck's sensors were test strips as Patent Owner alleges, Heller specifically states that it aims to improve glucose monitoring systems which use test strips." FWD, 26 (citing Ex.1016, 2:15-28). Thus, even if PO were correct that Beck's medical device did

not include sensor elements (and it was not), the Board properly found that the combination of Beck and Heller would have included such sensor elements. FWD, 34. PO ignores this finding entirely.

Second, PO contends that the Board did not address whether Petitioner proved a reasonable expectation of success for Beck-Heller-Lovejoy. Request, 14-15. PO is wrong. The Board properly found a reasonable expectation of success in combining the teachings Petitioner relied upon in Heller (e.g., implementation details applicable to Beck's system, *see* Pet., 41-45). FWD, 31-32. The Board did not rely on disclosure of Beck to find the recited unique identifier in Heller, nor did it need to do so; as detailed above, the teachings necessary to find a unique identifier were in Beck. PO's argument appears to allege a need to show bodily incorporation of Beck with Heller, or argue the references individually, rather than the combination of teachings; both alleged requirements are inconsistent with precedent. *See MCM Portfolio LLC v. Hewlett-Packard Co.*, 812 F.3d 1284, 1294 (Fed. Cir. 2015); *see also Gen. Elec. Co. v. Raytheon Techs. Corp.*, 983 F.3d 1334, 1352 (Fed. Cir. 2020) (reversing nonobviousness analysis for "unduly dissect[ing] prior art references into collections of individual elements"). PO's Request shows no error of fact or law in the Board's FWD, and the Director should deny PO's Request.

IV. Conclusion

The Director should deny Patent Owner's Request.

Respectfully submitted,

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By: / Inge A. Osman /

Inge A. Osman (Reg. No. 74,480)
inge.osman@lw.com
Latham & Watkins LLP
555 Eleventh Street, NW, Ste. 1000
Washington, DC 20004-1304
Tel.: 202.637.2200
Fax: 202.637.2201

*Counsel for Petitioners
Abbott Laboratories and Abbott Diabetes
Care Inc.*

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 21st day of August, 2025, a true and correct copy of the foregoing **Petitioner's Response to Patent Owner's Request for Director Review** was served by electronic mail on Patent Owner's lead and backup counsel at the following email addresses:

David Pekarek Krohn
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, WI 53703-3095
Telephone: (608) 663-7460
Fax: (608) 663-7499
pekarekkrohn-ptab@perkinscoie.com
Gentag-IPR@perkinscoie.com

Rodger Carreyn
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, WI 53703-3095
Telephone: (608) 663-7460
Fax: (608) 663-7499
carreyn-ptab@perkinscoie.com

Christopher G. Hanewicz
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, WI 53703-3095
Telephone: (608) 663-7460
Fax: (608) 663-7499
CHanewicz@perkinscoie.com

By: / Inge A. Osman /

Inge A. Osman (Reg. No. 74,480)
inge.osman@lw.com
Latham & Watkins LLP
555 Eleventh Street, NW, Ste. 1000
Washington, DC 20004-1304
Tel.: 202.637.2200
Fax: 202.637.2201

*Counsel for Petitioners
Abbott Laboratories and Abbott Diabetes
Care Inc.*