IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT DIABETES CARE INC., and ABBOTT DIABETES CARE LIMITED, Plaintiffs, v. DEXCOM, INC., Defendant.	C.A. No. 23-239-KAJ **HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY**[1]
DEXCOM, INC., Counterclaim-Plaintiff, v. ABBOTT DIABETES CARE INC. and ABBOTT DIABETES CARE SALES CORP., Counterclaim-Defendants.	

ABBOTT'S INITIAL CLAIM CHARTS

Pursuant to Paragraph 4.j(3) of the Court's Scheduling Order (D.I. 54), Plaintiffs Abbott Diabetes Care Inc. ("ADC") and Abbott Diabetes Care Limited ("ADC Ltd.") (collectively, "Abbott") hereby provide to Defendant DexCom, Inc. ("DexCom") Initial Claim Charts for U.S.

[1] This document, and its appendices, are marked Highly Confidential – Outside Attorneys' Eyes Only out of an abundance of caution based on the citation of documents produced by DexCom and marked as such. By doing so, Abbott does not concede that DexCom's marking of the cited production documents as Highly Confidential – Outside Attorneys' Eyes Only was, or is, appropriate under the Protective Order.

DEXCOM
EXHIBIT 1267

Patent Nos. 11,202,591 ("the '591 patent"), 11,266,335 ("the '335 patent") and 11,298,056 ("the '056 Patent") (collectively "the Asserted Patents").[2]

I. ASSERTED PATENTS AND CLAIMS

Abbott previously identified the accused product—the DexCom G7 Continuous Glucose Monitoring System ("the Accused Product")—in Abbott's August 17, 2023 Initial Identification of Accused Products, Asserted Patents, and Damages Model. The Accused Product infringes at least the following claims of the Asserted Patents: claims 1–12, and 14–29 of the '591 patent, claims 1–9, and 11–27 of the '335 patent, and claims 1–9, 11–18, 20–24, 27, and 29–30 of the '056 patent (collectively, "the Asserted Claims"), literally or under the doctrine of equivalents.

II. INITIAL INFRINGEMENT CLAIM CHARTS

Appendices A, B and C attached hereto constitute Abbott's initial infringement claim charts showing on a limitation-by-limitation basis how the Accused Product meets each and every limitation of the Asserted Claims of the Asserted Patents. Abbott contends that the manufacture, use, sale, and/or offer for sale within the United States, and/or the importation into the United States, of the Accused Product infringes, and would infringe, each Asserted Claim literally or under the doctrine of equivalents.

The documents and evidence in the charts are exemplary only and are not an all-inclusive list of evidence demonstrating DexCom's infringement of the Asserted Claims. All references to a particular document in Abbott's Initial Claim Charts includes any subsequent supplements or updates to the document. Furthermore, citation to a specific page or pages of documents is for

[2] In C.A. No. 21-977, the Court entered an order finding that claims 1 and 15 of the '954 patent do not claim patent-eligible subject matter under 35 U.S.C. § 101. As such, Abbott is no longer asserting the '954 patent in this action, unless and until that decision is overturned or vacated.

illustrative purposes only and does not preclude reliance on additional pages from the same document.

For each element of each Asserted Claim, Abbott reserves the right to rely on additional or different evidence and/or additional or different citations to evidence to support its infringement claims later in this litigation, including the right to introduce other text, images, documents, information, drawings, depictions, witness testimony (including expert testimony), and evidence that may further support or provide context to these Initial Claim Charts.

To the extent any claim element is not literally met, the Accused Products include a corresponding equivalent feature, structure, instrumentality, or function that is insubstantially different from the asserted claim element and/or performs substantially the same function, in substantially the same way, to achieve substantially the same result of the asserted claim element. These corresponding equivalent features, structures, instrumentalities and functions at least include those identified in the Initial Claim Charts. Abbott reserves the right to assert additional grounds for infringement under the doctrine of equivalents, based on Abbott's further investigation, fact and expert discovery, claim construction, DexCom's positions (*e.g.*, on claim construction, non-infringement, or invalidity), and/or any other relevant developments.

III. SUPPLEMENTATION AND AMENDMENT

Consistent with the Scheduling Order, Abbott's Initial Claim Charts are preliminary in nature. Abbott's Initial Claim Charts are based on the information reasonably available to it at this time, without the benefit of full fact or expert discovery. Abbott's investigation of facts relating to infringement is ongoing. Further, the Court has not yet construed the claims of the Asserted Patents. Accordingly, and consistent with the Scheduling Order, Abbott expressly reserves the right to supplement or amend its infringement analysis. Abbott also reserves the right to assert additional claims of the Asserted Patents, accuse additional products (including additional methods

and systems), and identify alternative bases or elements of infringement in DexCom's Accused Product, including by asserting that one or more claim elements are met under the doctrine of equivalents. These Initial Claim Charts are provided without waiver of any applicable privilege or immunity.

Dated: December 20, 2023

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)
Rodger D. Smith II (#3778)
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
rsmith@morrisnichols.com

Attorneys for Abbott Diabetes Care Inc. and Abbott Diabetes Care Sales Corp.

OF COUNSEL:

Ellisen Shelton Turner
KIRKLAND & ELLIS LLP
2049 Century Park East, Suite 3700
Los Angeles, CA 90067
(310) 552-4200

Amanda J. Hollis
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
(312) 862-20000

Benjamin A. Lasky
Ashley Ross
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
(212) 446-4800

Jason M. Wilcox
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave, NW
Washington, DC 20004
(202) 389-5000

Leland G. Hansen
MCANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, IL 60661
Tel: (312) 887-8000

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2023, copies of the foregoing were caused to be served upon the following in the manner indicated:

John W. Shaw, Esquire *BY ELECTRONIC MAIL*
Andrew E. Russell, Esquire
Nathan R. Hoeschen, Esquire
Emily S. DiBenedetto, Esquire
SHAW KELLER LLP
I.M. Pei Building
1105 North Market Street, 12th Floor
Wilmington, DE 19801
Attorneys for Defendant

Robert A. Van Nest, Esquire *BY ELECTRONIC MAIL*
Leo L. Lam, Esquire
Sophie Hood, Esquire
Elizabeth A. Egan, Esquire
R. Adam Lauridsen, Esquire
Zainab O. Ramahi, Esquire
Amy E. Philip, Esquire
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Attorneys for Defendant

David Bilsker, Esquire *BY ELECTRONIC MAIL*
QUINN EMANUEL URQUHART & SULLIVAN
50 California Street, 22nd Floor
San Francisco, CA 94111
Attorneys for Defendant

Kevin P.B. Johnson, Esquire *BY ELECTRONIC MAIL*
Todd M. Briggs, Esquire
Margaret Shyr, Esquire
Sara L. Pollock, Esquire
QUINN EMANUEL URQUHART & SULLIVAN
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Attorneys for Defendant

Brian P. Biddinger, Esquire *BY ELECTRONIC MAIL*
Cary Adickman, Esquire
QUINN EMANUEL URQUHART & SULLIVAN
51 Madison Avenue, 22nd Floor
New York, NY 10010
Attorneys for Defendant

Nathan Hamstra, Esquire *BY ELECTRONIC MAIL*
QUINN EMANUEL URQUHART & SULLIVAN
191 North Wacker Drive, Suite 2700
Chicago IL 60606
Attorneys for Defendant

Valerie Lozano, Esquire *BY ELECTRONIC MAIL*
QUINN EMANUEL URQUHART & SULLIVAN
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Attorneys for Defendant

/s/ Anthony D. Raucci

Anthony D. Raucci (#5948)