

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. IPR2024-00521

U.S. Patent No. 11,298,056

**PATENT OWNER'S OBJECTIONS TO ADMISSIBILITY OF EVIDENCE
SERVED WITH PETITION**

Pursuant to 37 C.F.R. § 42.64(b), Patent Owner objects as follows to the admissibility of evidence served with the petition for *inter partes* review on February 9, 2024.

Evidence	Objections
Exhibit 1208 (Declaration of Brian Gross, dated July 24, 2023)	Relevance: The following paragraphs are not cited in the Petition and, therefore, are not relevant: ¶¶ 1-25, 29-30, 50 and 53. FRE 402; FRE 403; 37 C.F.R. § 42.61. Improper Testimony: The following paragraphs contain statements for which the declarant lacks the knowledge, skill, experience, training, or education to testify as an expert in a matter 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 the opinions are based: ¶¶ 51-52, 54-61, 80. FRE 401; FRE 402; FRE 403; FRE 702; 37 C.F.R. § 42.65.
Exhibit 1209 (Curriculum Vitae of Brian Gross)	Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1211 (Exhibits A and B to Affidavit of Nathaniel E. Frank-White)	Incomplete: The exhibit is incomplete at least because additional documents and/or webpages available at hyperlinks therein were not submitted with the exhibit. FRE 106.

Evidence	Objections
	Relevance: Because the exhibit is incomplete, its probative value is substantially outweighed by unfair prejudice. FRE 403. Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Additionally, the exhibit is an improper compilation of multiple documents and, therefore, does not constitute one “printed publication.”
Exhibit 1217 (U.S. Patent No. 6,641,533)	Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1219 (U.S. Patent Application Publication No. 2006/0202859)	Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1223 (U.S. Patent Application Publication No. 2004/0122353)	Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.

Evidence	Objections
Exhibit 1225 (Geoffrey McGarraugh, <i>The Chemistry of Commercial Continuous Glucose Monitors</i>, Diabetes Technology & Therapeutics 11.S1 (2009))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: Petitioner has provided no admissible evidence establishing the date of publication of this exhibit. Therefore, Petitioner has not established its relevance. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1226 (U.S. Patent Application Publication No. 2004/0193025)	Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1227 (C. Choleau et al., <i>Calibration of a Subcutaneous Amperometric Glucose Sensor Implanted for 7 Days in Diabetic Patients: Part 2. Superiority of the One-Point Calibration Method</i>, Biosensors and Bioelectronics 17.8 (2002))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.

Evidence	Objections
Exhibit 1228 (G. Velho et al., <i>In Vivo Calibration of a Subcutaneous Glucose Sensor for Determination of Subcutaneous Glucose Kinetics</i>, Diabetes, American Diabetes Association 1.3 (1988))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1229 (John J. Mastrototaro, <i>The MiniMed Continuous Glucose Monitoring System</i>, Diabetes Technology & Therapeutics 2.1 (2000))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1231 (V. Poitout et al., <i>A Glucose Monitoring System for on line Estimation in Man of Blood Glucose Concentration Using a Miniaturized Glucose Sensor Implanted in the Subcutaneous Tissue and a Wearable Control Unit</i>, Diabetologia 36 (1993))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1233 (D. Barry Keenan, Ph.D. et al., <i>Delays in Minimally Invasive Continuous Glucose Monitoring Devices: A Review of Current Technology</i>, Journal of Diabetes Science and Technology 3.5 (2009))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: The purported publication date of September 2009 is after April 29, 2009, the filing date of Provisional Application No. 61/173,600 to which

Evidence	Objections
	the 056 Patent claims priority. Therefore, the exhibit is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1235 (S. Armstrong, <i>Wireless Connectivity for Health and Sports Monitoring: a Review</i>, British Journal of Sports Medicine (2007))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1236 (Alexandros Pantelopoulos & Nikolaos Bourbakis, <i>A Survey on Wearable Biosensor Systems for Health Monitoring</i>, 30th Annual International Conference of the IEEE EMBS Conference (2008))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1237 (Excerpts from Diabetes Forecast, November 2007)	Incomplete: The exhibit is a selective collection of pages from what appears to be a physical periodical, but numerous pages are missing, including, for example, pages 3, 5, 7-9, 16-93. Other pages also appear to be missing but cannot be identified due to a lack of consistent pagination. Thus, the exhibit is incomplete. FRE 106. Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.

Evidence	Objections
Exhibit 1238 (Excerpts from Diabetes Forecast, February 2007)	<i>Incomplete:</i> The exhibit is a single PDF page from what appears to be a periodical, but no other pages from the periodical are provided. Thus, the exhibit is incomplete. FRE 106. <i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. <i>Relevance:</i> Petitioner has provided no admissible evidence establishing the date of publication of this exhibit. Therefore, Petitioner has not established its relevance. FRE 402; FRE 403; 37 C.FR. § 42.61.
Exhibit 1239 (Bruce Buckingham et al., <i>Real-Time Continuous Glucose Monitoring</i>, Current Opinion in Endocrinology, Diabetes & Obesity 14.4 (2007))	<i>Hearsay:</i> The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. <i>Authenticity:</i> The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.

Evidence	Objections
Exhibit 1240 (Bruce Buckingham, M.D., <i>Clinical Overview of Continuous Glucose Monitoring</i>, Journal of Diabetes Science and Technology 2.2 (2008))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1241 (U.S. Food and Drug Administration, Center for Drug Evaluation and Research. Paradigm Real Time System, Premarket Approval, dated April 7, 2006. Retrieved from https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpma/pma.cfm?id=P980022S013 on July 21, 2023)	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: Petitioner has provided no admissible evidence establishing the date of publication of this exhibit. Therefore, Petitioner has not established its relevance. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1242 (Excerpts from Steven W. Smith, <i>The Scientist and Engineer's Guide to Digital Signal Processing</i>, California Technical Pub. (1997))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.

Evidence	Objections
Exhibit 1243 (B.A. Shenoi, <i>Introduction to Digital Signal Processing and Filter Design</i>, John Wiley & Sons (2006))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1244 (Medtronic Inc., News Release: Medtronic Receives FDA Approval for World's First Insulin Pump with Real-Time Continuous Glucose Monitoring, dated April 13, 2006. Retrieved from https://web.archive.org/web/20060427084431/http://wwwp.medtronic.com:80/Newsroom/NewsReleaseDetails.do?itemId=1144875806140&lang=en_US on July 21, 2023)	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: Petitioner has provided no admissible evidence establishing the date of publication of this exhibit. Therefore, Petitioner has not established its relevance. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1245 (Marc D. Breton Ph.D. et al., <i>Optimum Subcutaneous Glucose Sampling and Fourier Analysis of Continuous Glucose Monitors</i>, Journal of Diabetes Science and Technology 2.3 (2008))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating. Relevance: The exhibit is not cited or

Evidence	Objections
	discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 1246 (Mark R. Burge, MD et al., <i>Continuous Glucose Monitoring: The Future of Diabetes Management</i> , Diabetes Spectrum 21.2 (2008))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1247 (Adam Heller & Ben Feldman, <i>Electrochemical Glucose Sensors and Their Applications in Diabetes Management</i> , Chem. Rev. 108 (2008))	Hearsay: The exhibit constitutes inadmissible hearsay, and no hearsay exception applies. FRE 801-807. Authenticity: The exhibit is not authenticated as required by FRE 901 and is not self-authenticating.
Exhibit 1250 (Abbott's Initial Claim Charts)	Relevance: The exhibit is not cited or discussed in the Petition and, therefore, is not relevant. FRE 402; FRE 403; 37 C.F.R. § 42.61.

Date: September 6, 2024

Respectfully submitted,

/Leland G. Hansen/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Patent Owner's Objections to Admissibility of Evidence Served with Petition** in connection with *Inter Partes* Review IPR2024-00521 was served on September 6, 2024 by electronic mail to the following:

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Dated: September 6, 2024

/Leland G. Hansen/

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