

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEXCOM, INC.	)	
Petitioner,	)	
	)	Case No.:
vs.	)	IPR 2024-00521
	)	
ABBOTT DIABETES CARE INC.,	)	
Patent owner.	)	
_____	)	

DEPOSITION OF BRIAN D. GROSS

Portland, Oregon

Thursday, November 21, 2024; 8:43 a.m.

TAKEN IN BEHALF OF THE PATENT OWNER

REPORTED BY:

Victoria A. Guerrero, CSR, RDR, RMR, CRR

Job No. 21096

Pages 1 through 138

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Dexcom, Inc. v. Abbott Diabetes Care Inc.
IPR2024-00521

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3

4 DEXCOM, INC.)
5 Petitioner,)
6 vs.) Case No.:
7 ABBOTT DIABETES CARE INC.,) IPR 2024-00521
8 Patent owner.)
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17 BE IT REMEMBERED that, pursuant to notice, the
18 deposition of BRIAN D. GROSS was taken before
19 Victoria A. Guerrero, Oregon Certified Shorthand
20 Reporter, Registered Diplomate Reporter, Registered
21 Merit Reporter, and Certified Realtime Reporter, on
22 Thursday, November 21, 2024, commencing at the hour
23 of 8:43 a.m., in the conference room of the law firm
24 of Klarquist Sparkman LLP, in the City of Portland,
25 County of Multnomah, State of Oregon.

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By Mr. Hansen

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BRIAN D. GROSS

DexCom v Abbott

Thursday, November 21, 2024

Victoria A. Guerrero, CSR, RPR, RMR, CRR

MARKED	DESCRIPTION	PAGE	LINE
Exhibit 2242	Reply Declaration of Brian D. Gross re IPR 2023-01251	55	19
Exhibit 2243	Declaration of Brian D. Gross re Methods and Systems for Early Signal Attenuation Detection and Processing reflecting highlighting applied during deposition	137	3

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1 Thursday, November 21, 2024; 8:43 a.m.

2 Portland, Oregon

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4 Whereupon, BRIAN D. GROSS, having first
5 been sworn by the Oregon Certified
6 Shorthand Reporter, testified under oath as
7 follows:

8
9 EXAMINATION

10
11 BY MR. HANSEN:

12 Q Good morning, Dr. Gross. You've been
13 deposed previously, correct?

14 A Correct.

15 Q How many times have you been deposed?

16 A Two times in the past year.

17 Q And is that it?

18 Are those the only two times that you've
19 been deposed previously?

20 A Regarding this matter, yes.

21 Q But with regard to other matters, without
22 limit, how many times have you been deposed?

23 A I had a deposition with my former employer
24 related to a product liability issue.

25 Q Is that the extent, that deposition on a

1 product liability issue and the two depositions that
2 you had previously where you were serving as an
3 expert on behalf of DexCom?

4 A Correct.

5 Q So nothing beyond that?

6 A Correct.

7 Q Have you ever testified in court?

8 A Other than jury panel selection, no.

9 Q Other than your work for DexCom, have you
10 ever served as an expert witness or as a litigation
11 expert, witness or otherwise?

12 A So in the roles I've served with my former
13 employer, I was an expert in technologies guiding
14 the business and decision making, which is your
15 first question. In litigation, no.

16 Q And when you say that you were an expert,
17 technology expert with your previous employer, who
18 was that employer?

19 A At the time, Hewlett Packard Medical
20 Products was acquired by Phillips Healthcare. And
21 that's essentially where the majority of my
22 engineering, scientific and clinical work has been.
23 To be completely clear, Hewlett Packard split into
24 Agilent Technologies and Agilent was acquired by
25 Phillips, basically the healthcare division.

1 Q Do you still work for Phillips Healthcare?

2 A I do not.

3 Q So you worked for HP Medical Products which
4 split. And a company called Agilent was created.

5 And that company, Agilent, was then later acquired
6 by Phillips Healthcare; did I follow that correctly?

7 A Parts of Agilent. Agilent was the test and
8 measure division of Hewlett Packard. They decided
9 they want to focus on computers and printers and
10 didn't know what to do with the test and measure and
11 medical businesses. They spun out into Agilent
12 Technologies. And Phillips acquired the medical
13 products group from Agilent in approximately 2001, I
14 believe. 2000, 2001.

15 Q So I just want to make sure I understand
16 this clearly. So you worked for HP Medical
17 Products. When did you start working for them?

18 A Around the early 1990, 1994, 1992, that
19 time period.

20 Q And then at some point the test,
21 measurement and medical products component of HP
22 Medical Products was spun off into Agilent?

23 A That's correct.

24 Q And when did that happen?

25 A Sometime in the late '90s. I don't recall

1 the exact date, but we were not functioning as
2 Agilent for very long before we were acquired by
3 Phillips Medical.

4 Q And Phillips Medical specifically acquired
5 the medical products component of Agilent?

6 A Correct.

7 Q And when did that happen?

8 When did Phillips acquire the medical
9 products component of Agilent?

10 A If memory serves, that was closed in 2001.

11 Q And at that point you were then employed by
12 Phillips Healthcare?

13 A Phillips Electronics North America was the
14 division that actually signed my paychecks, but it
15 was part of Royal Dutch Phillips out of the
16 Netherlands.

17 Q And when did your employment with Phillips
18 end?

19 A I retired from Phillips July of 2022, if I
20 recall.

21 Q And since retiring from Phillips, have you
22 accepted other employment?

23 A Have I accepted other employment?

24 I am consulting. I left Phillips to bring
25 the last innovation I was working on at Phillips to

1 market. This is a molecular epidemiology product
2 set. That is essentially what my current sole
3 proprietorship is around.

4 Q And what is that sole proprietorship?

5 A Genomics for Infectious Disease LLC in
6 Massachusetts.

7 Q Other than yourself, does Genomics for
8 Infectious Disease have any other employees?

9 A No.

10 Q Does the work for Genomics for Infectious
11 Disease relate to glucose monitoring or glucose
12 measurements?

13 A I'm not sure I understand what you mean by
14 does the work for G for ID.

15 Q So at Genomics for Infectious Disease,
16 you're developing a product in an effort to bring it
17 to market; is that correct?

18 A So G for ID is a business that I do
19 consulting for. Well, consulting through. As well
20 as bring to market technologies that I had worked on
21 and have license to through my former relationship
22 with Phillips.

23 Q So the technologies that you're working on
24 to bring to market, the technologies that you
25 previously worked on at Phillips that you are now

1 working on through G for ID, do those technologies
2 relate to glucose monitoring or glucose
3 measurements?

4 A Not directly, no.

5 Q Do they relate indirectly to glucose
6 monitoring or glucose measurements?

7 A The technologies I have access to with G
8 for ID are looking at transmissions of infections
9 utilizing clinical data and pathogen genomics to
10 identify transmissions and transmission vectors.

11 Some of the clinical data could contain
12 glucose either through in-hospital or through other
13 methods. So that's essentially the connection, the
14 indirect connection to the G for ID technologies.

15 Q In terms of your work for HP medical,
16 Agilent, and Phillips, were you involved with any
17 glucose monitoring products?

18 A Yes. I have been involved with glucose
19 monitoring products in a few instances working with
20 Hewlett Packard, Agilent, and Phillips.

21 Q What glucose monitoring products were you
22 involved with?

23 A So there was an evaluation with Phillips
24 for inclusion of continuous glucose monitoring
25 technology in the physiologic monitoring system for

1 in-hospital care. And I, as part of a department
2 defense grant, was involved with continuous glucose
3 monitoring technologies as part of signal
4 acquisition for the stated objectives for that
5 research project with DOD.

6 Q So you mentioned two products. One of them
7 was a physiological monitoring system for
8 in-hospital care; is that correct?

9 A Yes.

10 Q And how did that involve glucose
11 monitoring?

12 A As CGM technologies became stable,
13 continuous glucose monitoring became a clinical
14 interest specifically in ICU, where typed glycemic
15 control is believed to improve patient outcomes in
16 specific cases of sepsis and other cases of shock.

17 So as part of response to changing
18 technologies, I was part of a team evaluating if
19 those technologies could be used, how would they be
20 interfaced, how would they fit into the workflows
21 that are supported in critical care, and how are
22 those technologies being used where patient care can
23 result in better outcomes.

24 Q So you were evaluating how continuous
25 glucose monitoring systems could be incorporated

1 into a larger system for physiological measurement?

2 A Into the ecosystem of patient monitoring,
3 yes.

4 Q Were you developing new CGM technology or
5 were you evaluating how existing CGM technology
6 could be incorporated into this larger ecosystem?

7 A For the work that I was involved with, it
8 would be the latter.

9 Q So just to be clear, the work that you were
10 involved in did not involve developing new CGM
11 technology?

12 A Not the work at Phillips Hewlett Packard as
13 part of the ecosystem.

14 Q Okay. And when was this work that you were
15 doing to develop the physiological ecosystem?

16 A This would be work in the -- in the 2006,
17 2007 time period.

18 Q Did this work ever result in any type of a
19 commercial product or commercial system that was
20 used or was in current use in hospitals, for
21 example?

22 A I'm not aware of a specific CGM system that
23 was implemented. However, we did extend some of our
24 open interfaces to support other devices so that if
25 a CGM manufacturer chose to participate, they would

1 have an open interface in which they could bring
2 their data into that ecosystem.

3 Q Did any CGM companies ever elect to take
4 advantage of that open interface in your
5 physiological ecosystem?

6 A I am not aware of one that chose to. And
7 in fact, the premise that continuous glucose
8 monitoring of the critically ill was a way or typed
9 glycemic control was a way to improve outcomes
10 became a bit controversial as the outcome studies
11 unfolded in this time period.

12 Q Is that because the results of those
13 studies indicated that typed glycemic control in
14 these situations, for example in the ICU, was not as
15 helpful as you thought it might be?

16 A Recalling back to some of the clinical
17 studies at the time, there was a lot of variability
18 in the protocols and in how glycemic control was
19 established. And it was hypothesized that that may
20 have been part of the reason why there was
21 variability in outcomes that were unexpected.

22 Q If I understand it, at Phillips you were
23 involved in developing an ecosystem to monitor in
24 the hospital certain physiological conditions in the
25 patient; is that correct?

1 A I was involved in the team that was
2 responsible for delivering to market specific
3 medical devices that participated in that patient
4 monitoring ecosystem, correct.

5 Q And what specific devices were you involved
6 in developing as part of that ecosystem?

7 A So at various assignments I had the
8 specification responsibility for our central
9 station, which is the data aggregation between
10 disparate monitors into a central location for alarm
11 enunciation and for data retrieval and review, and
12 then for export to other systems such as electronic
13 health records and the like.

14 I had clinical research and validation
15 responsibilities across the platform in the
16 portfolio. And again, this is with regards to HP
17 and Agilent Phillips.

18 Q And as part of this you evaluated the idea
19 of in this ecosystem of physiological data that's
20 being selected and made available in the hospital
21 and used to create records and all of this.

22 So this ecosystem, you evaluated using CGM
23 as one potential source of data in this ecosystem;
24 is that correct?

25 A Among other alternative and additional

1 sources for data, that is correct. The focus was
2 not on -- exclusively on CGM technologies. Yeah.

3 Q Okay.

4 A But it did include.

5 Q But based on some clinical research that
6 was done, there was some controversy, you said, that
7 arose regarding the use of CGM data in this
8 ecosystem; is that correct?

9 A There was interest in tight glycemic
10 control in critical care. And that could be
11 accomplished through a variety of glucose monitoring
12 approaches. CGM was one that was being considered
13 in the literature.

14 And as a result, the business decided it
15 was worth evaluating how we could help our customer
16 and help their patients by making these type of data
17 available to them in consolidated and interfaced
18 systems that we delivered to them.

19 Q So what was the controversy?

20 You said there was a controversy that arose
21 with respect to the use of -- with respect to either
22 tight glycemic control or the use of data to help
23 with tight glycemic control.

24 What was the controversy?

25 A So my understanding, recalling back at the

1 time, a few of the outcome study papers did not show
2 significant improvement in outcomes with the use of
3 tight glycemic control regardless of the technology
4 used to achieve that.

5 That was the controversy of it seems that
6 tight glycemic control may be helpful, and it turns
7 out it did not have a clinical impact at the time
8 that the studies completed their review.

9 Q So at the end of the day, the products that
10 were made available to hospitals, for example, did
11 not include continuous glucose monitoring, but there
12 was a provision that something -- well, let's just
13 put it that way. Let's just stop there and then
14 I'll ask my next question.

15 Do I understand correctly that the products
16 that ultimately were made available were open in the
17 sense that other manufacturers with medical
18 monitoring technology could, in theory, add their
19 device, their monitoring device to the ecosystem
20 because it was an open ecosystem; is that correct?

21 A So that's partly correct. The approach
22 that we had as part of the monitoring division,
23 being in most of the bedsides around the world, was
24 if the customer needed data, or if the customer
25 needed integration, we could provide an interface.

1 There's a device called VueLink,
2 V-u-e-L-i-n-k, which either was a licensed interface
3 where there was tight integration, where we had a
4 command and control interface exchange; or was an
5 open interface, which allowed basically any device
6 to show up speaking the protocol to put their data
7 into the monitoring system, therefore downstream to
8 the electronic health record, et cetera.

9 So this was not just for glucose. This was
10 for, kind of, near infrared spectroscopy
11 technologies and profusion technologies. Things
12 that were becoming available in clinical space that
13 our customer said, hey, I really need to have this
14 data available at the bedside, I need to see its
15 alarms at the bedside, I need to have it integrated.

16 So that was the motivation to provide these
17 interface -- open interfaces where it's a simple
18 data exchanged to the monitoring system or an alarm
19 exchanged to the monitoring system that can now
20 propagate out to the users and to the downstream
21 health record systems.

22 Q So this ecosystem, there were tight
23 interfaces and open interfaces; is that correct?

24 A Correct.

25 Q And in terms of the tight interfaces, there

1 was never a product that incorporated CGM in a tight
2 interface; is that correct?

3 A The closest I would say we had was related
4 to i-STAT blood analysis module, which was capable
5 of doing point-of-care glucose monitoring.

6 So it was not CGM in the construction of
7 this IPR, but it was a mechanism for the point of
8 care -- caregiver to get glucose fairly rapidly into
9 the decision process. That was an example of tight
10 integration since that data also needed to go out to
11 the laboratory for the quality control data.

12 Q And as far as you know with respect to the
13 open interface, there was never a CGM manufacturer
14 that elected to provide a product that was
15 compatible with your open interface, correct?

16 A I'm unaware and I would not be necessarily
17 made aware given it was up to the customer to decide
18 what they wanted to put onto that open interface
19 working with thousands of other potential vendors
20 providing other data that was deemed useful in the
21 critical care unit.

22 Q Now, you also mentioned that you were
23 involved in developing a product with the Department
24 of Defense that in some way might have involved
25 continuous glucose monitoring; is that correct?

1 A The intention of the grant work through
2 Phillips was to acquire data to help the military
3 prepare and detect things that could impact their
4 workforce readiness. And in that work, one of the
5 signals that we were acquiring in addition to things
6 such as physiologic heart rate, respiratory rate,
7 temperature was continuous glucose.

8 Q Was there a particular -- well, let me ask
9 you this: For purposes of that work, how was the
10 continuous glucose data being acquired?

11 A So there were several studies which the
12 continuous glucose technologies were deployed.

13 Q What technologies?

14 A Continuous glucose monitoring technologies.

15 Q Yeah. Which ones?

16 A So the DexCom system was deployed prior to
17 my joining that particular work. And the CGM data
18 was acquired through downloads that was made
19 available through the DexCom reader.

20 The clinical site was responsible for
21 deploying the CGM technology and ensuring it was
22 functioning during the intervention stages of the
23 specific research projects and for downloading the
24 data into the research dataset.

25 Q You said that this work with the DexCom

1 device was taking place before you got involved?

2 A The decision to use DexCom CGM was made
3 before I joined the group.

4 Q And what specific DexCom technology was
5 being used?

6 A I don't recall, to be honest.

7 Q What was the time frame?

8 A This would have been just COVID and post.
9 So 2018, '19, '20.

10 Q And with respect to CGM technology, what
11 was your personal involvement in this project?

12 A I was responsible for the data integration
13 into the research interface and understanding what
14 data is available through the CGM technology.

15 Time synchronizing it to specific events
16 that are occurring with other physiologic and event
17 monitoring. Helping the clinical research sites
18 understand the deployment and removal process based
19 on the information provided from the CGM
20 manufacturer. Helping the research sites make sure
21 they had appropriate stock on hand for the purpose
22 of the research project.

23 Q What was the result of the research
24 project?

25 A So one of the projects have been made

1 public and I can provide you a reference. The goals
2 ranged from early detection of infections prior to
3 symptoms to exposure to noxious agents such as
4 opioids.

5 So if you're interested, I can look up the
6 reference and provide you the actual results for
7 what has been made public.

8 Q You're familiar with the patent at issue in
9 this IPR proceeding; is that correct?

10 A Which patent are you referring to?

11 Q The patent at issue. The one that's being
12 challenged.

13 A So I'm familiar with Harper 11,298,056.

14 Q Yes.

15 A Okay. Yes, I'm familiar with that.

16 Q And you understand that that patent relates
17 to, among other things, is backfilling data gaps in
18 a user display?

19 A I'm sorry. Am I aware --

20 Q Are you aware that that patent relates to,
21 among other things, backfilling a data gap on a user
22 display for a CGM device?

23 A I'm aware that the patent claims as part of
24 claim 1, claim 1(A), a glucose monitoring system for
25 backfilling data gaps that occur while a user

1 monitors glucose levels, the glucose monitoring
2 system comprising of, et cetera, et cetera.

3 Q So the DexCom systems that you are familiar
4 with from your work on this DOD project, did those
5 systems backfill data gaps on the user display?

6 MR. MASON: Objection. Form. Scope.

7 THE WITNESS: The CGM systems for the
8 research project did not have a user display
9 available to them. They were just used as
10 blind recorders for the research project.

11 BY MR. HANSEN:

12 Q Did the commercial versions of those DexCom
13 products backfill data gaps on user display?

14 MR. MASON: Objection. Form. Scope.

15 THE WITNESS: I have not used the
16 DexCom-specific technologies of that era in my
17 opinions in this declaration.

18 BY MR. HANSEN:

19 Q Do you have any opinion as to whether the
20 DexCom products from that era backfilled data gaps
21 on user display?

22 MR. MASON: Objection. Form. Scope.

23 THE WITNESS: I haven't opined that
24 question. My declaration has found combination
25 of Patel 2009 and the Paradigm system which

1 clearly had capabilities that are described as
2 backfilling data.

3 BY MR. HANSEN:

4 Q So I think you understand that you're not
5 answering the question I asked. So I'm going to ask
6 the question again and ask you to answer the
7 question that I'm asking. I'm not asking you about
8 Paradigm. I'm not asking you about the Medtronic
9 products that you describe in your expert report.

10 I'm asking you whether you have any
11 knowledge or opinions about whether the DexCom
12 products from the 2018, '19, 2020 time period, those
13 DexCom products from that time period, when you were
14 working on this Department of Defense, did those
15 DexCom products, to your knowledge, have the
16 capacity to backfill data gaps on user display?

17 MR. MASON: Objection. Form. Scope.

18 THE WITNESS: Counselor, I did not include
19 those materials in this declaration. I'm
20 sorry. I have not formulated an opinion. If
21 you would like me to, I can do that. I can go
22 off and read the documentation and evaluate if
23 those technologies provided backfill in the
24 2019, '20, '21, '22 time period.

25 But for the purpose of my declaration

1 today, I have not considered those in the
2 material from 2009 and prior.

3 BY MR. HANSEN:

4 Q So I want to be very clear about my
5 questions because I need clear answers. So you've
6 just told us that in formulating the opinions in
7 your expert report that you did not consider any of
8 the DexCom products that were available during the
9 time period in question; is that correct?

10 MR. MASON: Objection. Form.

11 THE WITNESS: That's not correct.

12 MR. MASON: Form. Scope -- let me get my
13 objections in. And if nothing else, for
14 Victoria's sake.

15 THE WITNESS: That's not correct. If I
16 recall, the question you asked me was do the
17 recent DexCom technologies, 2018 beyond, do
18 they do those.

19 And what I shared with you is the
20 material that I evaluated for my declaration
21 was material prior to 2009 leading up to 2009.

22 BY MR. HANSEN:

23 Q Okay. So let's break it down.

24 A Can I finish my answer?

25 Q I didn't realize that you weren't finished.

1 Yes, please. Go ahead.

2 A So as you see in my material, the list of
3 exhibits on page 9 are all relevant for technology
4 at the time of the Harper question, April 2009.

5 In the material reviewed here there are
6 references that do include DexCom, Abbott, and other
7 CGM technologies of the time. Those are the
8 materials that I evaluated and drew my conclusions
9 and opinions from.

10 Q Okay. So with respect to the DexCom
11 products, based on the information that you
12 evaluated in forming the opinions in your expert
13 declaration, did those DexCom products backfill data
14 gaps on a user display?

15 MR. MASON: Objection. Form. Scope.

16 THE WITNESS: I have not formulated any
17 opinion on that. My opinions are formulated
18 based on the combination Patel and Paradigm
19 REAL-Time as described in my declaration.

20 BY MR. HANSEN:

21 Q So in forming your opinion, you evaluated
22 information relating to DexCom products that were
23 available as of April of 2009; is that correct?

24 MR. MASON: Objection. Form.

25 THE WITNESS: On page 19 of my

1 declaration, Exhibit 1208, I describe that
2 there are numerous articles that talk about
3 sensors of two and three electrode
4 configurations.

5 There's a reference I have here from
6 May of 2009, the article of Chemistry of
7 Commercial Continuous Glucose Monitor by
8 McGarraugh. And it provides a typical glucose
9 sensor including three electrodes, a GOx
10 working electrode, a counter-electrode, and a
11 silver/silver chloride reference electrode.

12 And each of the Medtronic Guardian
13 REAL-Time DexCom STS-7 and Abbott FreeStyle
14 Navigator measured the current flowing from an
15 oxidation electron-producing reaction at a
16 working electrode to a reduction,
17 electron-consuming reaction, at a
18 counter-electrode.

19 So these are the embodiments of the
20 analysis that I form my opinions on with
21 regards to this declaration.

22 BY MR. HANSEN:

23 Q Let's talk about the DexCom STS-7.

24 To your knowledge, did the DexCom
25 STS-7 backfill data gaps on a user display?

1 MR. MASON: Objection. Form. Scope.

2 THE WITNESS: I don't recall saying that
3 in my declaration. Is there an area that you
4 want me to look at?

5 BY MR. HANSEN:

6 Q I'm asking you, to your knowledge, based on
7 what you know, did the DexCom STS-7 backfill data
8 gaps on a user display?

9 MR. MASON: Objection. Form. Scope.

10 THE WITNESS: I haven't evaluated that in
11 my opinion.

12 BY MR. HANSEN:

13 Q Did any other DexCom product available in
14 April of 2009 backfill data gaps on a user display,
15 to your knowledge?

16 MR. MASON: Objection. Form. Scope.

17 THE WITNESS: Can you repeat your
18 question, please?

19 BY MR. HANSEN:

20 Q Other than the DexCom STS-7, did any other
21 DexCom product available in April of 2009 backfill
22 data gaps on a user display, to your knowledge?

23 MR. MASON: Objection. Form. Scope.

24 THE WITNESS: So what I can share with you
25 is my opinion was formed based on the Paradigm

1 REAL-Time that discloses when a
2 transmitter/insulin pump are outside of
3 transmission range. The transmitter holds 40
4 minutes' worth of memory. So continuous
5 glucose monitoring data can be repopulated in
6 the insulin pump.

7 BY MR. HANSEN:

8 Q Is that, that you're reading from, did that
9 relate to a DexCom product? Does that relate to a
10 DexCom product?

11 A This relates to my evaluation of how claim
12 1(K) is satisfied with the Paradigm REAL-Time and
13 Patel 2009 combination.

14 Q Is the Paradigm REAL-Time a DexCom product?

15 MR. MASON: Objection. Form.

16 THE WITNESS: The Paradigm REAL-Time
17 appears to be a Medtronic product at the time.

18 BY MR. HANSEN:

19 Q Okay. So did you understand that my
20 question was directed at DexCom products?

21 A I understand your question.

22 Q I need you to answer my question.

23 A I'm telling you what I based my opinions
24 on.

25 Q Okay. And I'm asking you, to your

1 knowledge, did any DexCom product available in April
2 of 2009 backfill data gaps on a user display?

3 MR. MASON: Objection. Form. Scope.

4 THE WITNESS: I was not -- I did not opine
5 on that.

6 BY MR. HANSEN:

7 Q Okay. I understand you didn't offer an
8 opinion on it. I'm asking you about your knowledge,
9 not limited to what you put in your declaration.

10 To your knowledge, whether it's in your
11 declaration or not, did any DexCom product available
12 in April of 2009 backfill data gaps on a user
13 display?

14 MR. MASON: Objection. Form. Scope.

15 THE WITNESS: I did not use DexCom
16 technology in the formulation of my opinions
17 related to this IPR.

18 BY MR. HANSEN:

19 Q Okay. Now --

20 A The answer in the declaration describes
21 Paradigm and Patel 2009 which does -- does provide
22 this backfill capability.

23 Q Well, we respectfully disagree with you
24 about that, but I'm not asking you about that. I'm
25 asking you about DexCom products. I understand you

1 don't want to talk about the DexCom products and so
2 you don't want to answer my question.

3 But I'm asking you not about Paradigm, not
4 about a Medtronic product. I'm asking you about a
5 DexCom product. And I'll give you one last chance
6 to answer the question.

7 To your knowledge, did any DexCom product
8 available in April of 2009 backfill data gaps on a
9 user display?

10 MR. MASON: Objection. Form. Scope.

11 THE WITNESS: I have no opinion on how
12 DexCom did or did not perform backload of data
13 in this time period.

14 BY MR. HANSEN:

15 Q Okay. Now, you've also said that you had
16 some experience with DexCom products when you were
17 working on a Department of Defense study in 2018,
18 '19, '20.

19 To your knowledge, did any DexCom product
20 available in that time frame backfill data gaps on a
21 user display?

22 MR. MASON: Objection. Form. Scope.

23 THE WITNESS: As I described to you, the
24 use of the DexCom CGM system was in record mode
25 only. There was no display as part of the

1 research project.

2 BY MR. HANSEN:

3 Q Okay.

4 A So therefore, I don't have an opinion on
5 whether it did or did not.

6 Q In forming your opinions set forth in your
7 expert declaration, did you consider whether any
8 DexCom products available before 2020 backfilled
9 data gaps on a user display?

10 MR. MASON: Objection. Form. Scope.

11 THE WITNESS: The materials I considered
12 in my opinion are listed in the table.

13 BY MR. HANSEN:

14 Q And you said some of them in some way
15 related to DexCom products. So I'm asking you.
16 I'll give you another chance to answer the question.

17 In forming the opinions in your expert
18 report, did you consider whether any DexCom product
19 available by 2020 backfilled data gaps on a user
20 display?

21 MR. MASON: Objection. Form. Objection.
22 Scope.

23 THE WITNESS: So the use of the DexCom
24 technology prior to 2009 was evaluated with
25 regards to the sensor technology in the

1 references I've listed.

2 BY MR. HANSEN:

3 Q Okay. So you evaluated the sensor
4 technology. Did you evaluate whether those products
5 backfilled data gaps on a user display?

6 MR. MASON: Objection. Form. Scope.

7 THE WITNESS: As you can see from the
8 references I've used in my declaration, the
9 state-of-the-art for the technologies of the
10 sensors was evaluated.

11 The reference for that is found, I
12 believe, in Exhibit 1225, The Chemistry of
13 Commercial Continuous Glucose Monitors by
14 McGarraugh, for the DexCom system, the Abbott
15 system, the MiniMed system, the Glucoday
16 system, and others are reviewed. These were
17 used to form my opinions.

18 BY MR. HANSEN:

19 Q So I understand that you considered some
20 information about DexCom products that were
21 available by 2009; is that correct?

22 MR. MASON: Objection. Form. Scope.

23 THE WITNESS: With regards to the
24 references I evaluated, DexCom technology was
25 included.

1 BY MR. HANSEN:

2 Q And the article that you're specifically
3 referring to, what exhibit number is that?

4 A Exhibit No. 1225.

5 Q So you evaluated some information about
6 DexCom products that were available by April of
7 2009, correct?

8 MR. MASON: Objection. Form.

9 THE WITNESS: The list of exhibits clearly
10 articulates all of the materials that I've
11 considered in reviewing and preparing my IPR.

12 BY MR. HANSEN:

13 Q Did you consider any information at all
14 about DexCom products that were available -- did you
15 consider any information in forming your opinions
16 about DexCom products?

17 MR. MASON: Objection. Form. Scope.

18 THE WITNESS: Counsel, I think I answered
19 that question already. The DexCom products
20 were evaluated with regards to the references
21 that I've listed on sensor technology,
22 Exhibit 1225.

23 BY MR. HANSEN:

24 Q Okay. And in evaluating DexCom products in
25 connection with your opinions, did you consider

1 whether those DexCom products backfilled data gaps
2 on a user display?

3 MR. MASON: Objection. Form. Scope.

4 THE WITNESS: So the evaluation of data
5 gap handling in the claim language, my opinion
6 is that the Paradigm REAL-Time and the Patel
7 2009 combined product meet that claim and would
8 have been obvious for a POSITA to implement at
9 the time and predating 2009.

10 MR. HANSEN: Okay. If this continues
11 we're going to have to go to the Board. We
12 can't spend an entire deposition like this.

13 MR. MASON: I mean, you're welcome to call
14 the Board. You're asking him questions about a
15 DexCom product that are not considered or
16 discussed at all in his declaration.

17 MR. HANSEN: But he won't say that. I
18 agree with you. He didn't consider them.
19 That's the point of my question. But he won't
20 answer the question.

21 I ask him about DexCom products and
22 he wants to talk about Medtronic products. The
23 answers are completely nonresponsive. He can
24 simply acknowledge, he can simply concede, no,
25 I didn't consider whether the DexCom products

1 backfilled data gaps. But he won't answer the
2 question and this is inappropriate and,
3 frankly, I think he's been coached to do this.

4 And if I need to go to the Board and
5 point this out, I will. This can't continue.
6 I've asked very clear questions about DexCom
7 products and Dr. Gross wants to tell me about
8 Medtronic products because he doesn't want to
9 just give an honest answer.

10 I'm going to give you one last chance
11 to answer the question honestly, Dr. Gross.

12 BY MR. HANSEN:

13 Q Did you consider in forming your opinions
14 in your expert declaration whether any DexCom
15 products backfilled data gaps on a user display?

16 MR. MASON: Objection. Form. Scope.

17 THE WITNESS: Counselor, I've tried to
18 answer your question and all its incantations.
19 The material I've used to draw my conclusions
20 and opinions in the declaration are listed in
21 the exhibit table.

22 MR. HANSEN: Okay. We're going to take a
23 break.

24 (Off record from 9:34 a.m. to 9:42 a.m.)

25 ///

1 BY MR. HANSEN:

2 Q Dr. Gross, do you know Dr. Andrew Ahmann?

3 A I don't believe so, no.

4 Q Do you recall ever meeting Dr. Andrew
5 Ahmann?

6 A No, I do not believe so.

7 Q Have you ever had a conversation with
8 Dr. Ahmann?

9 A No.

10 Q Have you ever read a declaration prepared
11 by Dr. Ahmann or signed by Dr. Ahmann?

12 MR. MASON: Objection. Form. Scope.

13 THE WITNESS: I believe I included a
14 declaration from him in my reply declaration
15 which is covered in prior -- a prior
16 deposition. I may be in error. I don't have
17 that reference here in front of me.

18 BY MR. HANSEN:

19 Q So did you read that declaration that you
20 just mentioned?

21 MR. MASON: Objection. Form. Scope.

22 THE WITNESS: I don't have it in front of
23 me, so I can't be sure.

24 BY MR. HANSEN:

25 Q You don't recall ever reading a declaration

1 signed by Dr. Ahmann?

2 MR. MASON: Objection. Form.

3 THE WITNESS: Counsel, I prepared for this
4 IPR in this deposition. I don't have that
5 material available to review. If it is
6 something I've read in the past, it's not here.
7 So I can't be able to testify truthfully that I
8 have or have not read it.

9 BY MR. HANSEN:

10 Q So my question was, do you recall reading a
11 declaration signed by Dr. Ahmann?

12 A I do not recall. I do not recall either
13 way.

14 Q Did you consider a declaration signed by
15 Dr. Ahmann in forming the opinions set forth in your
16 declaration in this matter? And I'm specifically
17 referring to Exhibit 1208.

18 A I have no reference materials in this
19 declaration from Dr. -- Ahmann, is it?

20 If there's something in this declaration
21 that you'd like me to look at, I'd be happy to look
22 at it. But I don't have any reference material here
23 that was included in this declaration from
24 Dr. Ahmann to the best of my knowledge.

25 Q Did you consult with any doctors or other

1 medical professionals in forming the opinions set
2 forth in your declaration, Exhibit 1208?

3 MR. MASON: Objection. Form.

4 THE WITNESS: My opinions are based on the
5 exhibited materials and my professional
6 materials which does include working in the
7 clinical space and with physicians and other
8 clinical practitioners.

9 As I've indicated in paragraph 11 of
10 my declaration, I've relied on my professional
11 experiences formulating the opinions expressed
12 in this declaration.

13 BY MR. HANSEN:

14 Q In forming the opinions set forth in your
15 declaration, Exhibit 1208, did you consider user
16 confusion associated with backfilling data gaps on a
17 CGM display?

18 MR. MASON: Objection. Form. Scope.

19 THE WITNESS: I did consider user
20 interaction. Specifically as a POSITA, they
21 would know to provide and would be motivated to
22 detect missing and accurate glucose data and
23 convey as much accurate information as possible
24 without providing inaccurate information. And
25 inaccurate information could include user error

1 associated with consuming that information.

2 BY MR. HANSEN:

3 Q So were you just reading from your
4 declaration, Exhibit 1208?

5 A You asked if I considered in 1208 user
6 error.

7 Q No. That isn't what I asked you.

8 A I'm sorry.

9 Q But my new question that I just asked you,
10 were you just reading, in answering my prior
11 question, were you just reading from your
12 declaration, Exhibit 1208?

13 A I was.

14 Q And where were you reading from?

15 A This is on page 52, paragraph 80, 8-0,
16 under "Motivation to combine" and "Expectation of
17 success."

18 Q So my question was, in forming the opinions
19 set forth in your declaration, Exhibit 1208, did you
20 consider user confusion associated with backfilling
21 data gaps on a user display?

22 MR. MASON: Objection. Form.

23 THE WITNESS: Yes. Insofar as it aides
24 the wearer or the person with diabetes to
25 interpret their data and make accurate and

1 better decisions about the care and their
2 disease management.

3 BY MR. HANSEN:

4 Q So in your opinion, how does user confusion
5 associated with -- in your opinion, what user
6 confusion could be associated with backfilling data
7 gaps on the user display of a CGM device?

8 MR. MASON: Objection. Form. Scope.

9 THE WITNESS: So an example of user
10 confusion that could be associated with not
11 displaying data that is repopulated would be
12 having access to the most recent data necessary
13 to make a decision for the wearer of the CGM
14 system and make a decision about how to care
15 for themselves being a person with diabetes.

16 There's one example of how backfilled
17 information and its usability could impact user
18 error.

19 BY MR. HANSEN:

20 Q Okay. You're talking about the impact of
21 not providing data, of not backfilled. I'm asking
22 you about user confusion associated with backfilling
23 data.

24 Do you have any opinions about user
25 confusion associated with backfilling data on a user

1 display?

2 MR. MASON: Objection. Form. Scope.

3 THE WITNESS: So while there may be
4 situations where it might not be reasonable,
5 the expectation and the promise of the
6 technology is to provide the data to the user
7 if it's reasonable and accurate glucose data.

8 BY MR. HANSEN:

9 Q Are there any situations where backfilling
10 the data could confuse the user?

11 MR. MASON: Objection. Form. Scope.

12 THE WITNESS: I don't believe I've
13 discussed that in my declaration. Are you
14 asking me to hypothesize out of thin air?

15 BY MR. HANSEN:

16 Q Well, so let's talk about what you -- you
17 said that, do I understand correctly, that in your
18 declaration you do not address confusion arising
19 from backfilling data on the user display?

20 MR. MASON: Objection. Form.

21 THE WITNESS: I don't think that's what I
22 said. What I said was not providing accurate
23 glucose data to the user after a gap condition
24 would be a possible cause for user error and/or
25 user confusion.

1 BY MR. HANSEN:

2 Q So I'm asking you --

3 A If I could finish your previous question.

4 Q Sure. Go ahead.

5 A If you're asking did I consider backfilling
6 data and its causes for user confusion; if the data
7 is known to be good, valid glucose data and it's
8 backfilled to the user's display, then the user
9 would obviously benefit from that. That's the
10 promise of the technology.

11 I can't imagine why you would withhold
12 information and not provide the backfill to the
13 user. That's the normal operating behavior of the
14 system as described in the materials that have been
15 reviewed.

16 Q Now, you're acting as an expert on behalf
17 of DexCom in this matter, correct?

18 A That is correct.

19 Q Have you considered any DexCom patents
20 explaining how backfilling data could confuse the
21 user?

22 MR. MASON: Objection. Form. Scope.

23 THE WITNESS: If they're not referenced as
24 material, then they were not included in my
25 evaluation.

1 BY MR. HANSEN:

2 Q Have you considered any information
3 relating to user confusion associated with
4 backfilling data on a user display?

5 MR. MASON: Objection. Form. Scope.

6 THE WITNESS: As I've stated, this
7 declaration is also cited with my professional
8 experience and we did backfill data in the
9 monitoring domain across different patient
10 scenarios including transport where certain
11 devices went with the patient and then came
12 back, thus filling the gap data.

13 And there are conditions where it is
14 important to verify that the data is the right
15 patient's prior to the backfill. So those
16 scenarios, obviously through my professional
17 experience, have been included.

18 Furthermore, I've been a user -- user
19 interface expert under IUC and the usability
20 standards and I've used those experiences to
21 guide the work here as part of my professional
22 experience.

23 The question you're asking about a
24 DexCom technology is not on my reference list.
25 However, the user -- usability considerations

1 are part of my evaluation.

2 BY MR. HANSEN:

3 Q So with all the information that you
4 brought to bear in forming your opinions, did you
5 consider any specific information relating to user
6 confusion caused by backfilling data gaps on a CGM
7 user display?

8 MR. MASON: Objection. Form.

9 THE WITNESS: I've used my professional
10 experience in matters of data merging and data
11 gap refill.

12 BY MR. HANSEN:

13 Q So drawing on that information, what is
14 your understanding of user confusion caused by
15 backfilling data gaps on a CGM user display?

16 MR. MASON: Objection. Form. Scope.

17 THE WITNESS: Again, if the data is
18 reliable and it belongs to this patient, then
19 the usability of the data is a human factors
20 consideration for the display.

21 And the examples of backfilling of
22 data in my declaration clearly shows
23 state-of-the-art at 2009 and before for how to
24 handle that gap data and redisplay for the user
25 in a safe and effective way given these

1 technologies had 510(k) clearance to display
2 data to the CGM wearer of the system.

3 To correct, it was originally a PMA,
4 not a 510(k).

5 BY MR. HANSEN:

6 Q So again, what is your understanding of
7 user confusion caused by backfilling data gaps on a
8 CGM display?

9 MR. MASON: Objection. Form. Scope.

10 THE WITNESS: Repeat, what is my opinion?

11 BY MR. HANSEN:

12 Q What is your understanding --

13 A Understanding.

14 Q -- of user confusion caused by backfilling
15 data gaps on a CGM user display.

16 MR. MASON: Objection. Form. Scope.

17 THE WITNESS: So my opinion, as evident in
18 this declaration, is by not filling a data gap,
19 you create the opportunity for user error. And
20 as long as the data is accurate and responsible
21 to the patient or to the client device that's
22 displaying it, if that patient ID is matching,
23 and if the user experience follows sound human
24 factors design considerations, that data should
25 be safe and effective for the user to consume.

1 BY MR. HANSEN:

2 Q Now, you mentioned FDA approval of certain
3 devices. Were you referring to the Medtronic
4 Paradigm devices?

5 MR. MASON: Objection. Form.

6 THE WITNESS: Yes. The Medtronic Paradigm
7 device as described in Exhibit 1211.

8 BY MR. HANSEN:

9 Q What FDA materials did you review relating
10 to the Medtronic Paradigm?

11 A For this declaration?

12 Q Let's start with that. For this
13 declaration.

14 A So the instructions for use and the FAQs as
15 embodied in 1211 are part of the cleared labeling of
16 the product.

17 Q Did you review any materials in connection
18 with the Paradigm that Medtronic specifically
19 submitted to the FDA?

20 MR. MASON: Objection. Form.

21 THE WITNESS: So as I stated, the material
22 that becomes customer-facing or wearer-facing
23 is part of the labeling and Medtronic would
24 have had to have received approval from that.
25 So by this being their public documentation for

1 instructions for use, hazards for use,
2 benefits, and other performance standards, this
3 is essentially part of their PMA clearance.

4 Having worked in the medical device
5 industry for years, I know this to be part of
6 the evaluation that FDA considers for safety
7 and efficacy prior to granting clearance to
8 market.

9 BY MR. HANSEN:

10 Q Other than Exhibit 1211, did you consider
11 any materials that Medtronic submitted to the FDA in
12 connection with its Paradigm products?

13 MR. MASON: Objection. Form.

14 THE WITNESS: I don't know if any of the
15 other reference materials were submitted as
16 part of supporting data from Shamanian or
17 others that describe the glucose monitoring
18 system, but they may have been.

19 BY MR. HANSEN:

20 Q Can you point to any evidence that
21 Medtronic sought FDA approval specifically for
22 backfilling a data gap on a user display?

23 MR. MASON: Objection. Form.

24 THE WITNESS: So with regards to the
25 labeling that the Medtronic device had at the

1 time, when loss of communication from the
2 transmitter to the insulin pump causes failed
3 reception of glucose data, missed data is
4 displayed as a gap, referencing Exhibit 1211,
5 page 8, page 43, page 49, page 73.

6 The MiniLink transmitter stores 40
7 minutes of glucose data that repopulates in the
8 insulin pump's display of continuous glucose
9 monitoring data following the correction of
10 failed reception. For example, the transmitter
11 and pump move within the transmission range.

12 Referencing 1211, page 8, which is
13 the FAQ that talks about, Can I swim or bathe
14 with the MiniLink transmitter? Which is a
15 section under the MiniLink REAL-Time
16 transmitter. The answer is Yes, the
17 transmitter is waterproof so you can swim,
18 shower, or bathe.

19 It goes on to say, As long as the
20 transmitter is within 6 feet, approximately
21 2 meters, of the insulin pump, CGM data will be
22 displayed on the insulin pump. If the MiniLink
23 REAL-Time transmitter and insulin pump are out
24 of range for longer than 40 minutes, only the
25 last 40 minutes will be repopulated. When

1 reviewing historical reports you would notice
2 gaps or gap data where information is missing
3 during this time period.

4 BY MR. HANSEN:

5 Q Okay. When you started that answer, were
6 you reading from your declaration, Exhibit 1208?

7 A The material is contained starting on
8 page 48, paragraph 76 of Exhibit 1208.

9 Q So you were reading from where on your
10 declaration? Could you tell me again?

11 MR. MASON: Objection. Form.

12 THE WITNESS: Paragraph 76 is where the
13 material starts.

14 BY MR. HANSEN:

15 Q And what do you mean by "the material"?

16 A The answer to your question.

17 Q Other than Exhibit 1211, can you point me
18 to any evidence that Medtronic sought FDA approval
19 to backfill data gaps on a user display of the
20 Paradigm device?

21 A In preparing my opinions for this
22 declaration, I relied on the public labeling that
23 essentially is part of the FDA-cleared labeling that
24 describes the behavior for the data gap creation and
25 correction in the MiniMed Paradigm REAL-Time --

1 excuse me -- Paradigm -- REAL-Time, excuse me, yes.

2 Q Okay. I think we're struggling with the
3 same issue. You don't want to answer my question so
4 you answer a different question.

5 The labeling that you're referring to is
6 Exhibit 1211, correct?

7 MR. MASON: Objection. Form.

8 THE WITNESS: The labeling of the MiniMed
9 Paradigm REAL-Time?

10 BY MR. HANSEN:

11 Q (Nods head.)

12 A Correct.

13 Q My question was other than Exhibit 1211,
14 can you point me to any evidence that Medtronic
15 sought FDA approval for backfilling data gaps on the
16 Paradigm user display?

17 A Not that was required for this declaration.

18 Q Well, whether it was required or not, did
19 you consider any information -- or let me take a
20 step back.

21 Whether it was required or not, other than
22 Exhibit 1211, can you point me to any information or
23 any evidence that Medtronic or MiniMed or Medtronic
24 MiniMed ever sought FDA approval to backfill data
25 gaps on the Paradigm user display?

1 MR. MASON: Objection. Form.

2 THE WITNESS: Counsel, the documents that
3 I reviewed are essentially the FDA-cleared
4 labeling of the product from which I completely
5 constructed my opinion on that question.

6 BY MR. HANSEN:

7 Q Okay. So --

8 A I'm sorry. These documents are very clear
9 on the system's performance in the presence of
10 conditions that cause data gaps and user experience
11 when that data gap is corrected. Those are the
12 basis from which I completed my opinion.

13 Q So with respect to your opinions regarding
14 Paradigm, Exhibit 1211 is the sole basis of your
15 opinion?

16 MR. MASON: Objection. Form.

17 THE WITNESS: I'm not sure that's what I
18 said. What I said was with regards to the
19 backfill and data recovery behaviors, they're
20 clearly defined in the instructions for use
21 with the Paradigm system. And this document
22 has also been part of the FDA clearance.

23 Is it the sole document? No.

24 There's a table of other documents that also
25 were used in my opinion, in my construction of

1 my opinion.

2 BY MR. HANSEN:

3 Q So --

4 A And they do reference the MiniMed Paradigm
5 REAL-Time system. A few of them do.

6 Q Let's break this down.

7 A Okay.

8 Q Okay. With respect to FDA submissions and
9 FDA approval, other than Exhibit 1211, are you aware
10 of any evidence that Medtronic or MiniMed or
11 Medtronic MiniMed ever sought FDA approval to
12 backfill data gaps on the Paradigm user display?

13 A Clarifying. With regards to this
14 declaration? No.

15 Q Okay. Separate and apart from this
16 declaration, are you aware of any other evidence?

17 MR. MASON: Objection. Form. Scope.

18 THE WITNESS: So the answer is yes, in my
19 reply declaration I did an analysis of the
20 regulatory clearance history, but that was
21 after this declaration and that information was
22 not used in my formation of opinions, nor does
23 that information alter my opinions that I
24 provided to you in this declaration.

25 ///

1 BY MR. HANSEN:

2 Q So you said in a reply declaration you
3 reviewed the FDA clearance history. Can you point
4 to any evidence of that FDA clearance history that
5 Medtronic sought approval to backfill data gaps on
6 the Paradigm user display?

7 MR. MASON: Objection. Form.

8 BY MR. HANSEN:

9 Q Other than Exhibit 1211.

10 MR. MASON: Scope.

11 THE WITNESS: 1211, in my opinion, is
12 sufficient evidence, as you say, to indicate
13 that the Paradigm REAL-Time system had
14 clearance for backfill of data and recovery of
15 that data after gap detection and event
16 correction.

17 BY MR. HANSEN:

18 Q Okay. You keep answering the question that
19 I specifically didn't ask. I specifically said
20 other than Exhibit 1211. Is there anything else
21 other than Exhibit 1211? And you answered my
22 question by pointing to Exhibit 1211. So I'm going
23 to ask it again.

24 Other than Exhibit 1211, can you point to
25 any evidence from the FDA clearance history that

1 Medtronic or MiniMed or Medtronic MiniMed ever
2 sought FDA approval to backfill data gaps on the
3 Paradigm user display?

4 MR. MASON: Objection. Form.

5 THE WITNESS: As I described to you, the
6 review of the FDA PMA history was not used in
7 this declaration. It was used subsequent to
8 this declaration in a reply declaration which I
9 believe you were present at. That information
10 is available and was not used in this
11 declaration.

12 So the answer is yes, I am aware of
13 other information. However, as I stated, other
14 than what you see in my declaration table,
15 Exhibit 1211 was used in my opinion formation
16 regarding the clearance that the Paradigm
17 system had for gap detection and gap
18 correction.

19 (Exhibit 2242, Reply Declaration of Brian
20 D. Gross re IPR 2023-01251, was marked.)

21 BY MR. HANSEN:

22 Q I'm handing you Exhibit 2242. For purposes
23 of this IPR, this is Exhibit 2242. It was also
24 Exhibit 1057 in IPR 2023-01251.

25 Is this the declaration that you were just

1 referring to in answering my previous questions?

2 A That I am aware of information that I did
3 not use in this declaration?

4 Q That you were aware of information about
5 FDA submissions relating to the Paradigm.

6 A Other than Exhibit 1211 that I used in
7 formulating my opinions of 1208?

8 I just want to be clear. Is that what
9 you're asking me?

10 Q I'm asking you -- my question was -- and
11 I'm going to ask you again to answer my questions.
12 My questions, not your questions.

13 A I'm sorry. I want to be clear and
14 truthful. So pardon me for seeking clarity.

15 Q Okay. Well, we can respectfully agree to
16 disagree about what your intents are.

17 But you previously mentioned a declaration
18 that you provided in another IPR that discusses the
19 FDA history for Paradigm.

20 And my question for you is, is Exhibit 2242
21 that declaration that you are referring to?

22 A I would have to read it to be sure, in its
23 entirety. I can say that it looks like it is, that
24 it certainly bears my signature. But I will, for
25 the sake of argument, say yes, that appears to be my

1 reply declaration which was not part of my
2 opinion-making evidence for Exhibit 1208, which is
3 what I thought we're here to talk about.

4 Q So with respect to -- now that you have
5 this other declaration that you've been referring to
6 and you can use it to refresh your recollection, can
7 you point me to any information other than
8 Exhibit 1211 indicating that Medtronic or Medtronic
9 MiniMed sought FDA approval to backfill data gaps on
10 the Paradigm user display?

11 MR. MASON: Objection. Form. Scope.

12 THE WITNESS: So with regards to
13 Exhibit 1208, other than Exhibit 1211, I did
14 not use other material in formulating my
15 opinion for Exhibit 1208.

16 Subsequent to that, I did evaluate
17 the regulatory PMA supplementals on the MiniMed
18 Paradigm system, which a few of those opinions
19 are present in what you've just shown as
20 Exhibit 2242 or DexCom Exhibit 1057, but those
21 were not used in the formulation of my opinions
22 at the time I submitted and prepared
23 declaration Exhibit 1208.

24 There's nothing in that that changes
25 my opinions. And there's also nothing in that

1 that contradicts the information that I used in
2 my opinion that is also in Exhibit 1211, the
3 DexCom -- sorry, the MiniMed Paradigm
4 instructions for use which were at that time
5 the FDA-cleared labeling.

6 BY MR. HANSEN:

7 Q Okay. Let's look at Exhibit 2242. Which
8 in the other IPR proceeding was Exhibit 1057, but in
9 this one it's 2242. So this is your reply
10 declaration.

11 It appears that the discussion relating to
12 the FDA approval history begins on page 57 of that
13 reply declaration, Exhibit 2242; is that correct?

14 MR. MASON: Objection. Form. Scope.

15 BY MR. HANSEN:

16 Q Are you unable to find the portion of your
17 declaration that relates to the approval process for
18 Guardian and Paradigm?

19 MR. MASON: Objection. Form.

20 THE WITNESS: Apologies, Counsel. This is
21 the first time I've read this document in over
22 a month. I want to make sure I refamiliarize
23 myself and be completely honest with the
24 response I provide you. So I appreciate you
25 giving me the time to review this document.

1 This was not part of the declaration that I was
2 prepared for today.

3 MR. MASON: Since there's no question
4 pending, we've been on the record for about an
5 hour, so you might want to find a good time for
6 a break.

7 BY MR. HANSEN:

8 Q Well, there is a question pending, but
9 let's go ahead. We can take a break soon. Go
10 ahead --

11 A I was going to say, I appreciate you giving
12 me an opportunity to scan through this material.
13 Could you please repeat your question so I can
14 answer it?

15 Q Well, my first question was, can you
16 identify where in this declaration you discuss the
17 FDA approval process for Paradigm Guardian?

18 MR. MASON: Objection. Form. Scope.

19 THE WITNESS: It's on the list of exhibits
20 on page 6. I describe Exhibit 1041 that I
21 reviewed, the US Food and Drug Administration,
22 Center for Drug Evaluation and Research,
23 Paradigm REAL-Time system, premarket approval
24 dated April 7, 2006, retrieved from the URL
25 which is an FDA website, which was accessed

1 July 21, 2023, which was available July 21,
2 2023.

3 Medtronic Exhibit 1044, Medtronic
4 Incorporated news release, Medtronic receives
5 FDA approval for the world's first insulin pump
6 with real-time continuous glucose monitoring
7 dated April 13, 2006, with the URL for that.

8 Exhibit 1058, US Food and Drug
9 Administration, Center for Drug Evaluation and
10 Research, Medtronic MiniMed, Guardian RT,
11 premarket approval, P980022/S011, dated
12 July 18, 2005.

13 And Exhibit 1059, US Food and Drug
14 Administration, Center for Drug Evaluation and
15 Research, Medtronic MiniMed Guardian RT,
16 Summary of Safety and Effectiveness Data
17 (SSED), retrieved from another URL for FDA.

18 Those are the references that I cite
19 in my discussion starting on page 57 of
20 Exhibit, now, 2242, which is my reply
21 declaration to a prior IPR, not this IPR, that
22 we're talking about, 1208.

23 BY MR. HANSEN:

24 Q Okay. So where in your declaration do you
25 discuss the FDA approval process?

1 Does that discussion -- is that found in
2 paragraphs 51, 52, and -- well, 51 and 52; is that
3 where the discussion is?

4 MR. MASON: Objection. Form. Scope.

5 THE WITNESS: No, sir. This reply
6 declaration was in reply to what Dr. Wright had
7 stated in his declaration. This is not my
8 opinion related to the FDA process. This is in
9 response to what Dr. Wright had commented on in
10 response to my original declaration.

11 BY MR. HANSEN:

12 Q Okay. Let me ask the question again.

13 In this declaration, your discussion of the
14 FDA approval process is found in paragraphs 51 and
15 52, correct?

16 MR. MASON: Objection. Form. Scope.

17 THE WITNESS: My response to Dr. Wright's
18 statement of the FDA approval process for the
19 MiniMed Guardian RT and Paradigm REAL-Time is
20 here. This is not my full understanding of the
21 regulatory process or the supplementals that
22 are contained within the FDA website.

23 BY MR. HANSEN:

24 Q Okay. And that section that discusses the
25 FDA approval process that's identified in the table

1 of contents as section 4E in your declaration, reply
2 declaration that is now Exhibit 2242?

3 MR. MASON: Objection. Form.

4 BY MR. HANSEN:

5 Q Let's do. This please take this
6 highlighter -- I'm handing you an orange
7 highlighter.

8 A Okay.

9 Q In Exhibit 2242, could you please highlight
10 in the table of contents 4E which says Paradigm
11 REAL-Time's FDA approval included management and
12 adjunctive treatment of Type I diabetes; could you
13 please highlight that?

14 MR. MASON: Objection. Form. The witness
15 is here to offer oral testimony, not to
16 highlight documents.

17 BY MR. HANSEN:

18 Q Could you highlight it, please?

19 A I see table of contents, E, Paradigm
20 REAL-Time FDA approval included management and
21 adjunctive treatment of Type I diabetes starting on
22 page 57.

23 Q Is there any other mention of the FDA in
24 the table of contents?

25 MR. MASON: Objection. Form.

1 THE WITNESS: I don't see the word "FDA"
2 anywhere else in the table of contents.

3 BY MR. HANSEN:

4 Q And other than the list of materials
5 considered, is there any discussion of the FDA in
6 your reply declaration, Exhibit 2242, other than
7 that found in paragraphs 51 and 52?

8 A So paragraphs 51 and 52 are my reply to
9 Dr. Wright's declaration. It is not a full listing
10 of my opinions related to FDA clearance of CGM
11 system --

12 Q Dr. Gross.

13 A Let me please finish.

14 Q No, I'm not. I'm not. Because you refuse
15 to answer my questions.

16 My question is, in your reply declaration,
17 Exhibit 2242, is there any discussion of the FDA
18 approval process other than that found in paragraphs
19 51 and 52?

20 You just went through the entire thing
21 looking for that information. Did you see any
22 discussion of the FDA in any other paragraphs?

23 MR. MASON: Objection. Form. Objection.
24 Scope.

25 THE WITNESS: Other than the list of

1 exhibits that references the actual 510(k)
2 references and PMA references, this is the area
3 in this reply declaration that I responded to
4 Dr. Wright highlighting the opinions that he
5 had with regards to the actual PMA
6 supplementals.

7 BY MR. HANSEN:

8 Q Now, in your discussion of the FDA in this
9 declaration, is there any mention of backfilling
10 data gaps on a user display?

11 MR. MASON: Objection. Form.

12 THE WITNESS: Counselor, if you can
13 provide me with Exhibit 1041 --

14 BY MR. HANSEN:

15 Q No. I'm asking you --

16 A 1044 --

17 Q I'm asking you about paragraphs 51 and 52.

18 A -- and 1059 I can review them --

19 Q I'm asking you about your declaration,
20 paragraphs 51 and 52.

21 In your declaration, in paragraphs 51 and
22 52, do you anywhere mention backfilling data gaps on
23 a user display?

24 MR. MASON: Objection. Form. Scope.

25 ///

1 BY MR. HANSEN:

2 Q I don't understand why you're looking at
3 everything except paragraphs 51 and 52.

4 MR. MASON: Objection. Form.

5 BY MR. HANSEN:

6 Q Can you please look at paragraphs 51 and
7 52? That's what I asked you about.

8 In paragraphs 51 and 52, in your reply
9 declaration, do you mention backfilling data gaps on
10 a user display?

11 A I do not. And that was not the intention
12 of the use of this declaration.

13 Q Okay. So now let's go back to --

14 A Let me complete my answer.

15 MR. MASON: Objection. Form. Scope.

16 THE WITNESS: I was asked to opine and
17 respond to the opinions of Dr. Wright and
18 Dr. Striegel. And the opinions and responses
19 that I provide in this declaration, currently
20 Exhibit 2242, are those opinions in response to
21 the opinions of Dr. Wright and Dr. Striegel.

22 It was not an exhaustive review of
23 FDA clearance supplementals and it was not an
24 exhaustive review of other materials that have
25 been discussed in their declarations.

1 BY MR. HANSEN:

2 Q Okay. So let's go back, then, to my
3 earlier question. I previously asked you other than
4 Exhibit 1211, can you point me to any evidence that
5 Medtronic or Medtronic MiniMed sought FDA approval
6 to backfill the data gap on the Paradigm user
7 display?

8 MR. MASON: Objection. Form. Scope.

9 THE WITNESS: In my declaration,
10 Exhibit 1208, I only use the material
11 presented, specifically Exhibit 1211, in
12 formulating my opinions regarding backfill for
13 what was the FDA clearance at the time for the
14 MiniMed Paradigm system.

15 BY MR. HANSEN:

16 Q Okay. I'm going to give you one last
17 chance to answer my question instead of answering
18 your own question. Okay?

19 Other than Exhibit 1211 -- other than
20 Exhibit 1211 -- can you point me to any evidence
21 that anyone ever sought FDA approval to backfill
22 data gaps on the Paradigm user display?

23 MR. MASON: Objection. Form. Scope.

24 THE WITNESS: Again, Counselor, I think
25 I'm answering your question. In regard to the

1 IPR that we're discussing, Exhibit 1208, I have
2 used the material here, Exhibit 1211, to
3 formulate my opinions.

4 BY MR. HANSEN:

5 Q So my question -- I want to be clear. It's
6 not limited to the information that you did or did
7 not rely on to formulate your opinions. I'm asking
8 you about what you know, whether you relied on it or
9 not.

10 Can you point me to any information other
11 than Exhibit 1211 that anyone ever sought FDA
12 approval to backfill a data gap on the Paradigm user
13 display?

14 MR. MASON: Objection. Form. Scope.

15 THE WITNESS: Other than how I present to
16 you in 1208, no.

17 BY MR. HANSEN:

18 Q Okay. And is there anything in 1208 that
19 you point to other than Exhibit 1211?

20 MR. MASON: Objection. Form.

21 THE WITNESS: With regard to? I point to
22 1211 --

23 BY MR. HANSEN:

24 Q With regard to the question that I have
25 tried to get you to answer for the last hour in

1 which you're dodging repeatedly.

2 And I'm telling you, Andy, this is going to
3 the Board. This is going to the Board.

4 So I'm going to ask it one last time.

5 Dr. Gross, other than Exhibit 1211, can you
6 identify any evidence that anyone ever sought FDA
7 approval to backfill data gaps on the Paradigm user
8 display?

9 MR. MASON: Objection. Form. Scope.

10 THE WITNESS: I don't mean to upset you,
11 Counselor, but the answer is, with regard to
12 Exhibit 1208, at the time I formulated my
13 opinions for this declaration I relied on the
14 labeling information that was available for the
15 Paradigm REAL-Time system as embodied in 1211.
16 Let me finish. The material that you exhausted
17 me to review occurred later, after I completed
18 my declaration, Exhibit 1208.

19 And there's nothing in the exhibit in
20 my reply declaration that changes my opinions
21 to what I provide to you in the declaration of
22 1208.

23 BY MR. HANSEN:

24 Q Okay. Again, you're trying not to answer
25 my question. The fact is, Dr. Gross, that the only

1 information that you have, the only information you
2 considered with respect to FDA approval for
3 backfilling the data gap on a user display is
4 Exhibit 1211; is that correct?

5 MR. MASON: Objection. Form. Scope.

6 THE WITNESS: The only -- I'm sorry.

7 BY MR. HANSEN:

8 Q The only information that you considered
9 with respect to whether or not the FDA -- let me
10 start the question again.

11 A Please.

12 Q The Exhibit 1211 is the only information
13 that you considered and relied upon with respect to
14 the question of whether anyone ever sought FDA
15 approval to backfill data gaps on the Paradigm user
16 display?

17 MR. MASON: Objection. Form. Scope.

18 THE WITNESS: Counsel, I was not asked to
19 opine that question in this declaration. And I
20 think I've answered your question that to the
21 best of my ability, the regulatory clearance as
22 implemented in the user instructions of
23 Exhibit 1211 is what I used to form my opinions
24 relative and subject to what I was asked to do
25 in Exhibit 1208.

1 MR. HANSEN: All right. We can take a
2 break.

3 (Off record from 10:49 a.m. to 11:08 a.m.)

4 BY MR. HANSEN:

5 Q So first of all, just a quick note of
6 apology. I've been referring to you as Dr. Gross.
7 I was corrected over the break. I think I should
8 have been saying Mr. Gross. I assume that --

9 A I assure you, I've been called worse.
10 Thank you.

11 Q Anyway, I'll try to use "mister" instead of
12 "doctor" going forward, but sometimes I do misspeak.

13 So we have been referring to Exhibit 211.

14 MR. MASON: Did you say 211?

15 BY MR. HANSEN:

16 Q I'm sorry. 1211. 1-211. Do you have
17 Exhibit 1211, Mr. Gross?

18 A I do. This is the electronic IFQ and FAQs
19 that's directly related? Yes.

20 Q Yes. And for purposes of the proceeding,
21 there are some pages that have been added in the
22 lower right corner of each page of the document,
23 some page numbering.

24 A Of the exhibit?

25 Q Of the exhibit, yes. That's not original.

1 It was added to make it easier for us to discuss
2 this document during a deposition like this, for
3 example. So I'm going to ask you, using that page
4 numbering, to refer to page 64 of Exhibit 1211.

5 A Is this the section that talks about
6 reading your graphs?

7 Q Yes. You see on page 64 there's a
8 depiction of a three-hour graph and also a depiction
9 of a 24-hour graph?

10 A Yes, I do.

11 Q And do you understand this to be a
12 depiction according to Medtronic what the user
13 should expect to see on the user display of the
14 Paradigm?

15 A Yeah. The graph indicates once it's
16 calibrated you can review your glucose sensor value
17 in real-time, review your current sensor glucose,
18 the most recent three hours of data. Press Escape
19 once from the home screen to view the most recent 24
20 hours of data. Press Escape twice from the home
21 screen.

22 And below that are two graphics that
23 indicate the 3-hour trend, the 24-hour trend. And
24 in the graphic it indicates that there's a data
25 selection that shows a selected time, the type of

1 graph or history, quote/unquote. If you scroll to
2 the left, essentially back in time, to get a review
3 of each of the historical trend reports that were
4 reported by the glucose sensor.

5 Is that where we're at?

6 Q Yes. Now, you just read a lot of different
7 text from that page, but you used a word that
8 doesn't appear on the page. It appears that you
9 slipped in an extra word. You just used the word
10 "report."

11 Can you please confirm to me that the word
12 "report" nowhere appears on this page?

13 A Yeah. The word "history" appears on this
14 page.

15 Q But the word "report" does not appear on
16 this page?

17 A That is correct, not in this particular
18 graphic.

19 Q So in describing this page, when you use
20 the word "report," that was something that you
21 added, not something that actually appears on the
22 page, correct?

23 MR. MASON: Objection. Form.

24 THE WITNESS: We've established that the
25 word "report" is not there. They refer to the

1 history from the sensor glucose measurements or
2 alarm.

3 BY MR. HANSEN:

4 Q All right. Now, do you see on the
5 three-hour graph towards the top of the image
6 there's a time 3:22 p.m.?

7 A I do see that in the graphic.

8 Q And next to the right of that time there's
9 a symbol. What is that symbol?

10 A It says p.m.

11 Q To the right of that, to the right of the
12 time 3:22 p.m., there's a symbol. What is that
13 symbol?

14 A You're referring to the sensor connection
15 status. Looks like an upside-down triangle on top
16 of a very small square.

17 Q So that symbol, you understand, indicates
18 the status of the sensor communication?

19 MR. MASON: Objection. Form.

20 THE WITNESS: That is described in
21 page 71, 73 through 76, where that icon changes
22 from the black-filled condition, which you see
23 here in this graph, to a hollow icon when the
24 sensor is connected to the transmitter and was
25 communicating to the pump, but that connection

1 has been lost.

2 BY MR. HANSEN:

3 Q Okay. So when this icon is solid, what
4 does that mean?

5 A A solid icon indicates the sensor is
6 connected to the transmitter and is communicating
7 with the pump.

8 Q And when the icon is -- I think you used
9 the word "hollow," is that the word that you used?

10 A I think so, yes.

11 Q When the icon is hollow, what does that
12 mean?

13 MR. MASON: Objection. Form.

14 THE WITNESS: So on page 73 of that same
15 reference, Exhibit 1211, there's a note that
16 says, You may see a weak signal recorded on the
17 sensor graphs without receiving an alert.

18 And in that picture you see the
19 sensor or the icon is inverse video or hollow,
20 in other words instead of black triangle on top
21 of a black square, it's a white triangle on top
22 of a black square circled by a black dot.

23 BY MR. HANSEN:

24 Q And what does that hollowed-out icon mean?

25 A So this indicates, according to the

1 troubleshooting alarm section, that it has not
2 received -- I'm sorry -- the insulin pump has not
3 received data from the glucose sensor for a period
4 of time. Indicating either, textually, weak signal,
5 sensor too far away from pump, see user guide,
6 escape act clear. Or as I said, the user
7 instructions are full of remedies for this
8 condition.

9 I think the actual icon itself is described
10 on page 43 under sensor setup, under sensor icons.
11 There are various icons that will appear on the top
12 of your pump screen, such as time, battery,
13 reservoir icons. The following two icons appear if
14 you're using the sensor.

15 And again, it shows the hollow sensor
16 appears once you start your sensor, refer to a
17 different chapter for starting your sensor. The
18 sensor icon, the black sensor, change when the
19 sensor is connected to the transmitter and
20 communicating to the pump.

21 And when your sensor and transmitter are
22 connected and communication is lost, this icon,
23 showing the inverse icon, the white triangle, white
24 square on a black circle, will reappear.

25 Q Okay. So if you turn back to page 64 of

1 Exhibit 1211, the icon that we have been discussing
2 is a solid black, correct?

3 A The signal connection status icon, it has
4 two states. In this page it shows as connected or
5 black.

6 Q And that means that the sensor is connected
7 to the transmitter and communicating with the pump,
8 correct?

9 A That appears to be correct.

10 Q And if we look at the line graph on page 64
11 of Exhibit -- so on page 64 of Exhibit 1211, looking
12 at the three-hour graph and the line graph on the
13 three-hour graph, the line graph extends all the way
14 to the right edge of the display window, correct?

15 A In the time graph area, yes, it extends to
16 what appears to be 3:22.

17 Q So the data extends all the way to 3:22?

18 A One would have to move the cursor to the
19 far right to see the measurement time for that
20 particular observation according to the instructions
21 for use. But in absence of that information, we can
22 assume measurement was last received at that minute.

23 Q Now, if you refer to page 65, do you see
24 some other depictions of the Paradigm display?

25 A On page 65, yes, there are two other

1 depictions.

2 Q And in each of those the time is specified
3 as 3:22 p.m., just like the three-hour graph on
4 page 64, correct?

5 A That appears to be the case.

6 Q And in both of them the icon indicates that
7 the device is connected to the -- that the sensor is
8 transmitted -- in each of those figures on page 64
9 of Exhibit 1211 the icon indicates that the sensor
10 is connected to the transmitter and communicating
11 with the pump, correct?

12 A The icon is solid.

13 Q In those images on page 65, the line graph
14 does not extend all the way to the right, correct?

15 A It's difficult to say. The entire trend
16 object wasn't rendered on these two pictures. It's
17 missing the top -- certainly the top line isn't
18 rendered.

19 And I think it makes sense because in this
20 diagram they're calling your attention to the arrow
21 next to the glucose measurement that indicates
22 whether it's been rising 1 to 2 milligrams per
23 minute in the last 20, or 20 to 40 milligrams per
24 deciliter in the last 20 minutes.

25 So the object here is really to express to

1 the user what the trend arrow to the right of the
2 glucose value is all about.

3 Q In those images the line graph does not
4 extend all the way to the right, correct?

5 MR. MASON: Objection. Form.

6 THE WITNESS: I don't see the top line on
7 that graph rendered either.

8 BY MR. HANSEN:

9 Q But you do see the right line rendered in
10 the images on page 64, right?

11 A I do see that.

12 Q And the line graph does not extend all the
13 way to that right line in either image on page 65,
14 correct?

15 A That is correct.

16 Q In the two images on page 65 there's a gap
17 between the right edge of the display screen and the
18 right end of the line graph, correct?

19 A I do see white between the end of the line
20 and what appears to be either the data selection
21 object or the right edge of the trend graph object.
22 It's not clear, given the trend graph object is not
23 fully rendered in this image. At least not in my
24 copy.

25 Q We're all working with a copy that was

1 provided by DexCom and that you say you relied on in
2 your expert report. So we'll work with that copy
3 that you and your client provided.

4 So you're saying that the vertical line to
5 the right of the display on the two images -- here.
6 I want this record to be clean.

7 Could you hand me what you're looking at
8 there?

9 A Certainly.

10 Q Okay. Do you see that on page 65 of
11 Exhibit 1211 I've highlighted a vertical line? I'm
12 sorry. Let me start over.

13 Do you see that on page 65 of Exhibit 1211
14 I've highlighted a vertical line?

15 A I do see an orange highlight on the images
16 on page 65.

17 Q And do I understand correctly that it's
18 your understanding that that either could be the
19 line that indicates the selected time or it could be
20 the right edge of the display screen; is that
21 correct?

22 MR. MASON: Objection. Form.

23 THE WITNESS: It could be. Doesn't look
24 like the images on page 66 have the trend graph
25 area fully rendered either.

1 BY MR. HANSEN:

2 Q Okay. So let's talk about the images on
3 page 65. That line that I highlighted in orange, is
4 it your understanding that that's either the line
5 that indicates selected time or the right edge of
6 the display screen?

7 MR. MASON: Objection. Form.

8 THE WITNESS: That would be a fair
9 assessment.

10 BY MR. HANSEN:

11 Q And in either event, there is a gap between
12 that line and the right end of the line graph in
13 those images, correct?

14 MR. MASON: Objection. Form.

15 THE WITNESS: Again, I do see that the
16 line -- that the data line, the history line
17 that the artist rendered does not continue to
18 the history selection bar.

19 BY MR. HANSEN:

20 Q Now, if we refer back to the three-hour
21 graph on page 64 of Exhibit 1211, the graph line
22 extends through the line that indicates selected
23 time and continues to the right edge of the display
24 screen, correct?

25 A That's correct. And the time focus in the

1 pictures on 64 and 65 are the same. Which would not
2 be possible if the artist rendering indicates that
3 there's no data at that time under your hypothesis,
4 that the trend line doesn't continue 'til the end of
5 the trend display area.

6 Q Now, you referred to the images on page 66
7 just a minute ago. Can you hand me your copy of the
8 exhibit again?

9 A (Witness complies.)

10 Q Using an orange highlighter, I'm going to
11 highlight two vertical lines in the images on
12 page 66. Do you see the lines that I've highlighted
13 there?

14 A I do.

15 Q And do you see that in both of these images
16 the line graph extends all the way to the vertical
17 lines that I've highlighted in orange?

18 A I'm sorry. Which line continues to the
19 vertical line?

20 Q The line graph.

21 A The glucose values?

22 Q Yes.

23 A Yeah. The history data does seem to
24 intersect the line that you've just highlighted in
25 Exhibit -- I'm sorry -- on page 66. I'm referencing

1 that, again, this figure is to educate the user on
2 what the double arrow up means next to their glucose
3 value. Or the double arrow down.

4 Q In all of the images on pages 64, 65, and
5 66, the icon indicates that the sensor is connected
6 to the transmitter and communicating with the pump,
7 correct?

8 MR. MASON: Objection. Form.

9 THE WITNESS: Yeah. In all six images,
10 the sensor is basically the black triangle over
11 the black square.

12 BY MR. HANSEN:

13 Q Now, if you could turn, please, to page 73
14 of Exhibit 1211.

15 A This is under "sensor alarm conditions"?

16 Q Yes.

17 A Okay.

18 Q So on this page there's a description of
19 two sensor alarm conditions, weak signal and lost
20 sensor, correct?

21 A That's correct.

22 Q And on the next page, page 74, there's a
23 description of four additional sensor alarm
24 conditions, low transmitter, bad transmitter,
25 meaning the battery's depleted or the battery is

1 low, bad sensor, sensor end.

2 And then if you continue on to page 75
3 there's calibration error; meter BG, now meaning you
4 need to do a blood glucose reading; meter BG by, you
5 need to do a blood glucose calibration by a certain
6 time; low glucose on page 76; high glucose; and on
7 page 76, again, sensor error.

8 These are all as described in this document
9 sensor alarm conditions, correct?

10 A This is actually in the troubleshooting and
11 alarm section under the sensor alarm conditions,
12 yes.

13 Q So let's just summarize, under the heading
14 "Sensor Alarm Conditions" there's one, two, three,
15 four, five, six, seven, eight, nine, ten, eleven,
16 twelve sensor alarm conditions that are described,
17 correct?

18 A I believe your math is correct.

19 Q The first sensor alarm condition that's
20 described is weak signal, correct?

21 A Correct.

22 Q And within that description of the weak
23 signal condition there's a note that says, Note:
24 You may see a weak signal recorded on the sensor
25 graphs without receiving an alert. An alert

1 condition will start once the pump has not received
2 sensor data for the length of time set in missed
3 data; do you see that?

4 A I do.

5 Q Now, there's an image to the right of that.
6 It says, Weak signal, sensor too far away from pump,
7 see user guide, escape, act, clear; do you see that?

8 A I do.

9 Q And do you understand that to be the image
10 that would be displayed as described in that note
11 that you may see a weak signal recorded on this
12 sensor graphs without receiving an alert?

13 MR. MASON: Objection. Form.

14 THE WITNESS: So my understanding is that
15 the text that the pump will show is the alarm
16 text or the alert text. And I think what the
17 note is saying as you traverse the data you may
18 see a weak signal in the sensor graphs, but did
19 not necessarily receive that alert. For
20 example, I believe -- so does that answer your
21 question?

22 BY MR. HANSEN:

23 Q Well, let me ask. It says, You may see a
24 weak signal recorded on the sensor graphs without
25 receiving an alert.

1 What is your understanding what "alert" is
2 it referring to there?

3 A So there is an independent time setting for
4 this missed data alert as they describe on page 13
5 or page 49 of this exhibit, which tells you how long
6 you will wait before you alert the user that there
7 is failed reception of sensor data.

8 So if the -- my understanding is if the
9 interruption in communication with the pump recovers
10 before that timer value, you will see it in the
11 missing data, if you traverse the data trend line,
12 but you may not necessarily have received that
13 alert.

14 I think that's what they're trying to tell
15 you.

16 Q So let's look at the first sentence of the
17 note. It says, You may see a weak signal recorded
18 on the sensor. And "weak signal" is capitalized,
19 first caps, right?

20 A Correct.

21 Q You may see a weak signal recorded on the
22 sensor graphs without receiving an alert. In that
23 sentence, what is the weak signal recorded on the
24 sensor graphs? And what is the alert that you don't
25 receive?

1 A So the alert that's described on page 49 is
2 based on how long the pump will wait while missing
3 data from the sensor before it gives you an alert on
4 the face of the pump. The pump normally goes to its
5 home screen. Alerts are displayed on that face.
6 And the user, according to the instructions for use,
7 would press Escape either once or twice to get to
8 this trend graph.

9 So the scenario that I believe they're
10 warning the user, is that if you have a sensor
11 disconnect situation that doesn't last longer than
12 what you've configured for the missed data time, as
13 described on 49, if you traverse the data, you may
14 see this weak signal status as they're showing you
15 in that little inserted picture.

16 However, you may not have gotten the alert
17 on the face of the insulin pump, the resting home
18 display, which is where it announces its text and
19 helpful information, what to do about it.

20 Q So there's three images on page 73,
21 correct?

22 A Correct.

23 Q The first image, is that what the note is
24 referring to when it says you may see a weak signal
25 recorded on the sensor graphs?

1 A No. Not my understanding. The first one
2 is the alert that the pump displays to the user in
3 the home screen. I call your attention to the
4 previous page 72 where it says on number three, it's
5 talking about escape or act to clear the alarm
6 situation.

7 And in the picture to the right of that you
8 essentially are looking at the home screen of the
9 insulin pump with the alert description, they
10 actually say alert description and instruction shown
11 here. That is the weak signal alert that they're
12 describing in the first picture on page 73.

13 The alert condition -- I'm sorry. The weak
14 signal that you're seeing in the trend graph on the
15 picture below that, the user would have had to
16 activate the trend graph by going from their home
17 screen, in this case it's a three-hour view, so they
18 have to press Escape once.

19 And in this case, this is where they're
20 saying you may or may not have received that first
21 alert on the home screen, but you may see it on the
22 graph trend depending on where you configured the
23 insulin pump to alert you to lost -- missed data.

24 Q Can you hand me your copy of the exhibit
25 again?

1 A Sure.

2 Q So if you look at the images on page 73, do
3 you see in the second image, the middle image I've
4 highlighted in pink the words "weak signal"?

5 A I see.

6 Q And you see that I've put green
7 highlighting around the perimeter of the top image?

8 A I see that, too.

9 Q Okay. So is it your understanding that
10 what I've highlighted in pink in the middle image is
11 the alert?

12 Or is that -- there's obviously a
13 difference between -- according to this note between
14 a weak signal recorded on the sensor graphs and an
15 alert. Because it says, You may see a weak signal
16 recorded on the sensor graphs without receiving an
17 alert and an alert condition will start once the
18 pump does not receive sensor data for the length of
19 time set in the missed data.

20 A Uh-huh.

21 MR. MASON: Objection. Form.

22 BY MR. HANSEN:

23 Q So in that context of a weak signal
24 recorded that may be seen without receiving an alert
25 and an actual alert condition, which is what I've

1 highlighted in pink in the middle image --

2 MR. MASON: Objection. Form.

3 BY MR. HANSEN:

4 Q -- is that the alert condition?

5 MR. MASON: Objection. Form.

6 THE WITNESS: What you appear to have
7 highlighted in green is the alert or alarm
8 condition as described above on page 72. The
9 home screen appears. And follow the
10 instructions that appear with the alarm to fix
11 the alarm condition.

12 And to the right of that you can see
13 that they're showing the home screen with text
14 in it that says, Alarm description and
15 instruction show here. Which would be what you
16 would see in the home screen of the insulin
17 pump that you have outlined in green
18 highlighter. That's the alarm or alert
19 condition.

20 BY MR. HANSEN:

21 Q So --

22 A If I can finish?

23 The pink is what you will see as you
24 traverse data that a weak signal recorded on the
25 sensor graphs, you can get that without getting a

1 weak signal alarm, is what they're telling you, or
2 telling the user.

3 Q So what I've highlighted with green, that's
4 the alert or alarm. And what I've highlighted with
5 pink is an indicator that might appear without
6 receiving an alert?

7 MR. MASON: Objection. Form.

8 THE WITNESS: That appears to be what
9 they're describing to the user for sensor alarm
10 conditions.

11 BY MR. HANSEN:

12 Q So if you're looking at the text that
13 accompanies these figures, if you're looking at that
14 text, in terms of what's visual to the user, there's
15 a description of this weak signal alert and there's
16 also a description of this weak signal indicator
17 that you could receive even without an alert,
18 correct?

19 MR. MASON: Objection. Form.

20 THE WITNESS: If I understand your
21 question correctly, if you traverse the trend
22 glucose data and you move through the sections
23 of trend glucose in either the 3-hour or
24 24-hour graphs, you may see a weak signal alert
25 there. But you did not get a weak signal alarm

1 at the home screen.

2 Which makes sense. You're letting
3 the user know of a condition that is impacting
4 your ability to see your glucose trend data.
5 That's important for the user to correct that
6 in order for them to make maximum use of the
7 data provided by their system.

8 BY MR. HANSEN:

9 Q And it's that weak signal alert -- so
10 you're saying as the user traverses back in time,
11 that that's when they would see the weak signal
12 alert?

13 MR. MASON: Objection. Form.

14 THE WITNESS: According to what the
15 instructions for user are telling you, if you
16 traverse your glucose trend graph and you find
17 a situation where a weak signal was detected,
18 that alert would appear. But it doesn't mean
19 that you got an alarm saying that weak signal
20 has occurred for whatever you set that alarm
21 condition to be, 10 minutes, 30 minutes, 40
22 minutes, et cetera.

23 BY MR. HANSEN:

24 Q Now, in this, in the text under this
25 heading "Weak Signal" on page 73 of Exhibit 12,

1 there's no mention of a gap or a data gap, correct?

2 MR. MASON: Objection. Form.

3 THE WITNESS: I'm not sure what you mean
4 by "mention of a data gap."

5 BY MR. HANSEN:

6 Q Well, in that text --

7 A Let me finish my answer, please.

8 Because in the sections of FAQ, and when
9 they talk about what happens in the condition of
10 weak signal and how the insulin pump will receive
11 the data when it can be reconnected, they clearly
12 talk about data is repopulated in the pump.

13 So specifically on page 8, as long as the
14 transmitter is within 6 feet of the insulin pump's
15 CGM, data will be displayed on the insulin pump
16 screen. If the transmitter and insulin pump are out
17 of range for longer than 40 minutes, only the last
18 40 minutes will be repopulated. When viewing
19 historical reports, you will notice a data gap where
20 information is missing during this period of time.

21 Q Okay. So I'm, again, asking you
22 specifically about the text on page 73 of
23 Exhibit 1211 that's associated with these two
24 figures we discussed.

25 In that text associated with those two

1 figures, is there any mention of a gap or a data
2 gap?

3 A That's not where I would look for that
4 information. So they're just describing what the
5 weak signal condition is.

6 Q Okay. Let's try the question one more
7 time. See if you can answer my question.

8 In the text associated with the figures
9 that we just discussed on page 73 of Exhibit 1211,
10 in that text there is no discussion or mention of
11 data gaps, correct?

12 MR. MASON: Victoria, can you repeat the
13 question, please?

14 MADAM COURT REPORTER: "QUESTION: In the
15 text associated with the figures that we just
16 discussed on page 73 of Exhibit 1211, in that
17 text there is no discussion or mention of data
18 gaps, correct?"

19 MR. MASON: Thanks.

20 THE WITNESS: So in that section that
21 talks about the alarms, they simply tell you
22 what to do about it and how it impacts data
23 that you would be enjoying in the trend review.

24 BY MR. HANSEN:

25 Q So in that text, they're discussing this

1 weak signal indication and a weak signal alert.
2 They're not discussing data gaps, correct?

3 MR. MASON: Objection. Form.

4 THE WITNESS: On this page they're just
5 talking about the alarm condition.

6 BY MR. HANSEN:

7 Q Okay.

8 A In other sections they talk about the
9 impact of that condition on the trended data.

10 Q Now, I want to follow up on something that
11 you said a few minutes ago. So if you could turn,
12 please, turn back to pages 64, 65, and 66 in
13 Exhibit 1211. And let's specifically look at
14 page 65.

15 Did I understand you to testify that the
16 discussion on this page is related to the up arrow
17 and down arrow?

18 A Yes. The heading for this particular page
19 is "Your glucose values" and they clearly indicate
20 that glucose value will be shown on your graph.
21 They promise that for each data point on your graph,
22 a sensor reading time is available.

23 And if there's an arrow to the right of the
24 sensor glucose data, they're telling you under what
25 conditions a single arrow up or down on page 65 or

1 double arrow up or down on page 66 would result
2 from.

3 Q And when we talked about the images on this
4 page, you said that those images were incomplete; is
5 that correct?

6 MR. MASON: Objection. Form.

7 THE WITNESS: The images do not seem to
8 contain the other graph trend objects that are
9 displayed in the other graph trend. And the
10 line itself may be artist rendered.

11 BY MR. HANSEN:

12 Q By the "line itself," you're talking about
13 the line that I highlighted in orange on that page?

14 A No. The glucose trend line. The glucose
15 measurement line.

16 Q Okay. And did I understand correctly that
17 it's your testimony that -- or your opinion that the
18 images depicted on this page 65 are incomplete
19 because the artist was trying to illustrate these
20 trend arrows and wasn't so concerned about other
21 aspects of the display?

22 MR. MASON: Objection. Form.

23 THE WITNESS: It is possible that the
24 image with the gross value and the arrow was
25 sufficient to explain to the user what it means

1 and the information in the rest of the display
2 may not be relevant.

3 BY MR. HANSEN:

4 Q And is that your understanding for why
5 there appears to be a gap between the lines
6 highlighted in orange and the trend graph lines?

7 MR. MASON: Objection. Form.

8 THE WITNESS: It is at least one reason
9 for that.

10 MR. MASON: Just a heads-up. Lunch is
11 here whenever you want. I'm not trying to rush
12 you. To the extent you're hungry or Mike's
13 hungry.

14 MR. HANSEN: We could probably take a
15 lunch break now.

16 MR. MASON: Okay.

17 (Off record from 11:57 a.m. to 12:27 p.m.)

18 BY MR. HANSEN:

19 Q Mr. Gross, if you would, please, turn to
20 your declaration, Exhibit 1208. And I'm going to
21 direct your attention to the discussion that begins
22 on page 89 in paragraph 138.

23 A Okay. I'm there.

24 Q Do you see on page 89 the heading "Ground 2
25 claim mappings"?

1 A I do.

2 Q And what do you mean by that? What are
3 ground 2 claim mappings?

4 A So section 8 of the document covers claim
5 1 -- excuse me -- ground 1 which is the
6 Paradigm/Patel 2009 combined combination where I
7 talk about claim 13. And ground 2 is the
8 Paradigm/Patel/Goldsmith combination.

9 Q But what is a claim mapping?

10 A What is a claim mapping?

11 Q Yes. This term that you've used in your
12 declaration on page 89, you use the term "claim
13 mappings." What are claim mappings?

14 A So this is where I described the combine --
15 or the combination and evaluate and provide opinions
16 of how the claim is either rendered obvious or --
17 rendered obvious with the reference of the combined,
18 combination.

19 So claim 29, for example, talks about a
20 glucose monitoring system of claim 1 further
21 comprising a secondary receiver unit.

22 Q Okay. So the combination that you're
23 referring to you identify as Patel 2009 combined
24 with Paradigm combined with Goldsmith; is that
25 correct?

1 A That's correct, for this area.

2 Q For claim 29.

3 A Correct.

4 Q So if you could turn to page 90, the next
5 page in your declaration, Exhibit 1208.

6 A Okay.

7 Q Do you see the heading in the box at the
8 top of that page?

9 A There is no heading in the box of page 90.
10 It's just the subpart of the claim.

11 Q Okay. So, yes. So we won't call it a
12 heading. We'll call it -- there's a box at the top
13 of the page and the box has text that says,
14 "Wherein, the secondary receiver unit is configured
15 to include a limited number of functions as compared
16 with the receiver unit," correct?

17 A Correct.

18 Q And you're saying that that text is one of
19 the elements or limitations of claim 29; is that
20 correct?

21 A Correct.

22 Q So in your Paradigm/Goldsmith/Patel
23 combination, what is the receiver unit?

24 A So referring back to page 85 which gives a
25 pictorial representation of the combined --

1 combination Paradigm, Patel and Goldsmith, we see
2 that the construction is based on a receiver unit,
3 in this case the intermediary device, and the
4 secondary receiver, which is the watch in this case.

5 Q So I want to understand here. You're
6 saying that the receiver unit of claim 29 is the
7 intermediary device that you've identified with a
8 red box in the figure on page 85 of your
9 declaration?

10 A Yes. So claim 29 calls for a system of
11 claim 1 with a secondary receiver unit, which in
12 this case is a watch. And the claim simply says
13 that the second receiver unit is configured to
14 include a limited number of functions compared with
15 the receiver unit.

16 So in the construction here, the receiver
17 unit for Paradigm/Patel/Goldsmith would be either
18 the insulin pump or the PDA or the cell phone that
19 Patel talks about as the targeted receiving unit for
20 the glucose sensor data.

21 And the secondary receiving unit, the watch
22 in this case, just needs to have a limited number of
23 functions compared to that.

24 Q So can you state again what the receiver
25 unit is in your combination?

1 MR. MASON: Objection. Form.

2 THE WITNESS: As I described the
3 combination, Patel 2009, Paradigm and
4 Goldsmith, in paragraph 130, I'd say that the
5 Paradigm/Patel combination includes a
6 subcutaneous sensor and glucose sensor
7 transceiver as taught by Patel, see
8 paragraph 77 above.

9 BY MR. HANSEN:

10 Q I'm sorry. What paragraph are you reading
11 from?

12 A I'm sorry. I'm on 130, page 83. Glucose
13 sensor transceiver includes a processor in
14 communication with the sensor for processing signal
15 produced by the sensor to convert raw signal --
16 excuse me -- raw sensor signal into calibrated
17 processed glucose values using algorithms stored in
18 the sensor transceiver, referencing 1212, which is,
19 I believe, Patel 2009.

20 The glucose sensor transceiver maintains a
21 two-way communication link with one or more remote
22 monitoring devices including, e.g., infusion pump,
23 PDA, computer, cell phone, blood glucose meter, that
24 received processed calculated glucose values
25 transmitted from the glucose sensor transceiver, see

1 paragraph 72, 98, 101 above. Also citing Patel
2 2009.

3 The combination in paragraph 131 adds a
4 watch controller, as taught by Goldsmith, as an
5 additional device for receiving and displaying
6 glucose data and related information.

7 And I go on to say a POSITA would have
8 found it obvious to implement this combination
9 system such that watch controller received processed
10 glucose data from the glucose sensor transceiver or
11 the monitor, insulin pump, cell phone, or both.

12 And that the Goldsmith/Paradigm/Patel
13 combination supports both this direct and indirect
14 communication between the intermediary device, the
15 infusion pump, the cell phone, the monitor, what
16 have you, or direct communication with the glucose
17 sensor transceiver directly.

18 So when I talk about secondary device is
19 considered to include a limited number of functions
20 compared to the receiver unit, it is either the
21 insulin pump, cell phone, PDA, or all the things
22 that Patel says the system can talk to, and/or to
23 the glucose sensor transceiver itself.

24 That's essentially what I'm saying in 140,
25 that the watch controller is configured to include a

1 limited number of functions as compared with the
2 receiver unit.

3 Goldsmith teaches that the watch controller
4 interacts with the glucose sensor or infusion pump
5 that stores glucose values and displays values to
6 indicate the actual level of blood glucose and,
7 optionally, trending glucose values, referencing
8 Goldsmith paragraph 86.

9 MR. MASON: Maybe just slow down for
10 Victoria's sake.

11 BY MR. HANSEN:

12 Q You know, again, you don't even appear to
13 be attempting to answer my question.

14 MR. MASON: Objection. Form.

15 BY MR. HANSEN:

16 Q So continue on, but then I'm going to ask
17 you again, when you're done, what in this
18 combination is the receiver?

19 I mean, most of what you're telling me has
20 nothing to do with my question. I understand that
21 you can read from your report, but I need you to
22 answer my question.

23 In your combination of Patel 2009, Paradigm
24 and Goldsmith, what is the receiver?

25 A So continuing, as I describe, the receiver

1 unit is what Paradigm/Patel describes as the
2 receiver of the glucose sensor data. In Patel it is
3 an insulin pump, a cell phone, a PDA, et cetera.

4 In Paradigm it's clearly the insulin pump
5 with display capabilities. And what Goldsmith adds
6 is the secondary receiver unit to receive a limited
7 number of the functions compared to that core
8 receiving unit, the cell phone, the PDA, the insulin
9 pump.

10 So the receiver unit is what Patel
11 describes as the target of these sensor glucose data
12 in the sections I referenced.

13 Q Well, okay. We need to have a clear record
14 and you've been bouncing around in your report and
15 referencing all kinds of things. So let me see if I
16 can try to understand what you said there.

17 You mentioned a core receiving unit and you
18 said that Patel describes the receiving unit as the
19 target of the sensor glucose data.

20 So is that how we know what the receiver is
21 in your combination? The receiver is the target of
22 the sensor glucose data?

23 A So let me refer back to paragraph 72 of my
24 declaration that describes Patel, that the sensor --
25 the glucose sensor has data exchanged with the

1 monitor over two-way communication.

2 If you look at page 47, Patel goes on to
3 talk about the sensor transceiver can talk to a
4 variety of other devices, including infusion pumps,
5 computers, PDAs, cell phones, blood glucose meter,
6 and characteristic monitors as an example.

7 So in the combination when I add Goldsmith,
8 that is the receiver unit that I am evaluating and
9 the watch in this case would be a secondary receiver
10 unit.

11 Q Okay. When you say receiver unit that
12 you're evaluating, what is the receiver unit that
13 you're evaluating?

14 A It's the device that receives the sensor --
15 glucose sensor data and stores those values for
16 display.

17 Q Okay. So in your combination, the receiver
18 that you're evaluating receives sensor glucose data
19 and stores it for display?

20 A As Goldsmith describes that is at least the
21 simplest form to implement, the display of the data
22 as a very simple example of the limited number of
23 functions compared to the receiver unit.

24 Q Okay. Compared to what receiver unit?
25 What receiver unit? What is the receiver unit that

1 you're referring to?

2 MR. MASON: Objection. Form.

3 THE WITNESS: I apologize. I thought it
4 was clear. Sensor transceiver can talk to a
5 variety of devices. An insulin pump is a
6 receiver unit. A PDA is a receiver unit. A
7 cell phone is a receiver unit. That's the
8 teaching that Patel tells us about how to get
9 glucose data into a variety of other devices.

10 BY MR. HANSEN:

11 Q So if you look at page 47 of your
12 declaration, you reproduced figure 11 there and
13 you've annotated it with what you identify as
14 communication links. And then there's devices:
15 Blood glucose meter, characteristic monitor,
16 infusion pump, a computer, a PDA, a cell phone.

17 Are you saying that those devices are the
18 receiver in claim 29?

19 A For the purpose of the evaluation, I
20 considered the device that's receiving the glucose
21 value for trending, for display, as the receiver
22 unit.

23 Q Let me direct your attention to
24 paragraph 143 which begins on page 92 of your
25 declaration, Exhibit 1208.

1 A Okay.

2 Q Now, in the first sentence of paragraph 143
3 you state, Goldsmith teaches both direct and
4 indirect communication between the watch and on-body
5 unit. And thus, a POSITA would have found it
6 obvious to implement the watch in this manner within
7 the Patel 2009/Paradigm system.

8 What is the on-body unit that you're
9 referring to?

10 A So referring back to paragraph 122 where I
11 describe what Goldsmith is offering, Goldsmith --
12 they teach that the watch controller device receive
13 sensor data, so glucose values. So the on-body
14 device would essentially be the glucose sensor
15 system.

16 Q And in your Patel 2009/Goldsmith
17 combination, what is the on-body unit?

18 A So in the combination device of
19 Patel/Paradigm/Goldsmith, the on-body unit is the
20 glucose sensor transceiver.

21 Q And you're referring to the glucose sensor
22 transceiver from Patel 2009?

23 A That is one glucose sensor transceiver in
24 the combination, yes.

25 Q Is there another glucose sensor transceiver

1 in the combination?

2 A The Paradigm also describes a glucose
3 sensor transceiver.

4 Q And in your combination, the watch
5 communicates both directly and indirectly with the
6 on-body unit or the glucose sensor transceiver?

7 MR. MASON: Objection. Form.

8 THE WITNESS: I don't think that's what
9 I'm saying. What I'm showing and what I'm
10 saying is --

11 BY MR. HANSEN:

12 Q Well, let's go --

13 A Sorry. Let me complete my statement here.

14 If you look at figure 10 on page 93, 110 is
15 essentially the Goldsmith watch component. And in
16 this figure we see the glucose sensor transceiver,
17 the on-body system. I'm talking to an infusion pump
18 or an insulin pump, which would be the primary
19 receiver or the receiver unit. These two devices
20 talk to each other as we've described and as we've
21 seen in both Patel and Paradigm.

22 The direct communication is the green line
23 which indicates that the secondary receiver, the
24 watch system, has the ability to communicate to the
25 glucose sensing device directly or can get the

1 glucose data through the glucose information that
2 the infusion pump was sent. That's the indirect
3 path.

4 Q Okay. So I want to go back to your
5 paragraph 143. And it says in the first sentence,
6 Goldsmith teaches both direct and indirect
7 communication between the watch and on-body unit.
8 And thus a POSITA would have found it obvious to
9 implement the watch in this manner.

10 Does "in this manner" mean with both direct
11 and indirect communication? Is that what "in this
12 manner" is referring to?

13 A Either and both, either/or and both.

14 Q Well, it says both and it says and. It
15 doesn't say either/or. Where is either/or coming
16 from?

17 A I'm sorry. 143 says Goldsmith teaches both
18 direct and indirect communication between the watch
19 and on-body unit. And thus a POSITA would have
20 found it obvious to implement the watch in this
21 manner.

22 Again, further, Patel describes that the
23 system can do both direct and indirect
24 communication. So for example, in the situation
25 where the infusion pump is not being worn by the

1 person with diabetes, the watch can still
2 communicate and interrogate glucose values directly
3 from the glucose sensor.

4 So there's an example where the
5 implementation would support both direct and
6 indirect.

7 Q But it seems like now you've eliminated the
8 primary receiver in your example. You said the pump
9 would be -- for example, in the image on page 93.

10 You said the pump would be the primary
11 receiver, the watch would be the secondary receiver.
12 So now you're just describing a situation where
13 you've got a system with no pump, no secondary
14 receiver -- or no primary receiver.

15 A Or it's temporarily --

16 MR. MASON: Objection. Form.

17 THE WITNESS: Or it's temporarily not
18 available.

19 BY MR. HANSEN:

20 Q Where does it discuss it being temporarily
21 available?

22 A A POSITA would interpret that as knowing
23 the use case of how the primary receiver operates
24 within the system, even with the pump being the
25 primary receiver, the secondary receiver could

1 receive its glucose values directly from the on-body
2 unit. These are teachings, again, from Goldsmith.

3 Q Okay. So if I look -- I'm trying to
4 understand what you're telling me here in
5 paragraph 143. Maybe this will help. Let's look at
6 paragraph 137.

7 Do I understand correctly that in
8 paragraph 137 you're describing the Patel
9 2009/Paradigm/Goldsmith combination that you say
10 renders claim 29 obvious? Are you describing that
11 combination here in paragraph 137?

12 A That's in the section of "Motivation to
13 combine and expected success." That starts on
14 page 85.

15 Q Okay. So you say that if this combination
16 is implemented as described above, includes the
17 Patel 2009 Paradigm system that monitors and
18 displays glucose data in the manner described above
19 with respect to claim 1.

20 And then you say, Along with a wirelessly
21 connected watch that receives glucose data both
22 directly from the on-body glucose sensor transmitter
23 device as well as indirectly via the pump or other
24 handheld device and then displays that glucose data
25 on the watch display.

1 Is your statement here an accurate
2 description of the watch with respect to having both
3 direct communication of the sensor transmitter
4 device and indirect communication with the sensor
5 transmitter device?

6 MR. MASON: Objection. Form.

7 THE WITNESS: So for the claim, it doesn't
8 matter, right? The claim doesn't make any
9 depiction of whether it's direct or indirect.
10 It just says it receives -- it receives data
11 from the -- where a number of functions are
12 compared.

13 And I go on to say in 144 of the
14 declaration, For the purpose of this report,
15 I've been asked to assume that received process
16 sensor data from the data processing and
17 transmitter unit in claim 29 may be satisfied
18 by direct communication of process sensor data
19 from the data processing and transmitter unit
20 to the secondary receiver, or indirect
21 communication of the process sensor data from
22 the data processing and transmitter unit to the
23 secondary receiver unit of intermediary device.

24 And it is my opinion that claim 29 is
25 rendered regardless of whether it is

1 interpreted to mean secondary receiver receives
2 data directly from the data processor and
3 transmitter unit or indirectly through an
4 intermediary device such as an insulin pump,
5 handheld device, or by larger monitor taught by
6 Patel. The point is a POSITA would have found
7 it obvious.

8 BY MR. HANSEN:

9 Q Okay. So again, you seem to want to answer
10 your own questions. I'm asking you about your
11 combination. I'm trying to understand what your
12 combination is.

13 What is the combination that you say
14 renders this obvious?

15 What is the combination?

16 What exactly is the Patel
17 2009/Paradigm/Goldsmith combination?

18 And you, in answer to a question a few
19 minutes ago, brought up the fact that the secondary
20 receiver in your combination is the watch. And that
21 the watch is in both direct and indirect
22 communication with the transceiver unit, with the
23 sensor transceiver unit. That seems to be what
24 you're saying here in paragraph 137. It seems to be
25 what you're saying in paragraph 143.

1 Do I understand correctly that when you
2 state in your declaration that the watch is in
3 indirect and direct communication -- that you're
4 stating that in your combination the watch is in
5 direct and indirect communication with the pump --
6 not the pump, with the sensor transceiver unit?

7 MR. MASON: Objection. Form.

8 THE WITNESS: So recall, Patel doesn't
9 require that there's continual communication to
10 what is being argued as the receiver unit.
11 Patel reminds us and teaches us that it might
12 be a cell phone that I interact with
13 occasionally to upload my glucose data and see
14 my glucose trend. It doesn't require that it's
15 continuously connected at all times in order to
16 receive data.

17 So what the combination does and what
18 Goldsmith teaches us is I can talk to that cell
19 phone device, for example, and get the glucose
20 data from it. Or if I can talk directly to the
21 glucose sensor, I can get that direct
22 communication if I can't talk to the cell phone
23 or the PDA or whatever it is that's the primary
24 receiver or the receiver unit that's described
25 in claim 29.

1 BY MR. HANSEN:

2 Q So you said that Patel doesn't require that
3 there's continual communication in what's being
4 argued as the receiver unit.

5 What is your basis for that opinion, that
6 Patel doesn't require continual communication with
7 the receiver unit?

8 MR. MASON: Objection. Form.

9 THE WITNESS: I'm sorry. Your question
10 again?

11 BY MR. HANSEN:

12 Q In response to my question just a few
13 minutes ago you said Patel doesn't require continual
14 communication with the receiver unit. And I wanted
15 to know, what was your basis for that opinion? Your
16 opinion that Patel doesn't require continual
17 communication with the receiver unit.

18 MR. MASON: Objection. Form.

19 THE WITNESS: So in Patel 2009,
20 Exhibit 1212, paragraph 86 talks about another
21 advantage is that glucose history information
22 is stored on the transceiver, the glucose
23 transceiver.

24 Thus, because the transceiver can be
25 networked to a plurality of devices, the

1 information is available to any receiver or
2 network node on demand. Furthermore, the
3 transceiver can continuously calculate glucose
4 values even when a remote device is not in
5 proximity to the user. I think that describes
6 this doesn't necessarily need to be in
7 connection at all times.

8 Patel goes on to describe how the
9 data synchronized with the transceiver and the
10 remote device when it was not communicating
11 with the transceiver when the glucose values
12 were acquired.

13 BY MR. HANSEN:

14 Q And where is that at?

15 A That's continuing in paragraph 86.

16 Q Paragraph 86 of Patel 2009?

17 A Yes, bottom of page 15 on to 16. Frankly,
18 that makes sense based on the teachings of Patel,
19 that you're not going to have your computer with you
20 at all times, yet it is a target for the glucose
21 data coming from the sensor transceiver.

22 Q So you're saying the secondary receiver can
23 be a computer?

24 A No. That's not what I'm saying.

25 Q I'm sorry. The primary receiver can be a

1 computer?

2 A I agree with that. Yes.

3 Q And that would be, for example, a computer
4 sitting on a desk somewhere that's not in constant
5 communication with the sensor transceiver?

6 MR. MASON: Objection. Form.

7 THE WITNESS: Yeah. That's what I'm
8 saying in paragraph 72 of my declaration, that
9 Patel discloses a transceiver coupled to a
10 subcutaneous glucose sensor that exchanges data
11 with a monitor over a two-way communication
12 link. The transceiver encompasses a processor
13 that calibrates the sensor and calculates
14 glucose values, a memory that stores these
15 calculated glucose values, and a battery.

16 And further, the sensor set
17 encompasses a subcutaneous sensor which
18 monitors glucose levels by exposing electrodes
19 to body fluid. And further, the monitor
20 displays glucose level and trend graphs.

21 And finally, the transceiver contains
22 two-way communication with various devices
23 including a monitor, infusion pump, PDA, cell
24 phone, blood glucose meter to exchange glucose
25 values, calibration data, and other information

1 referencing figure 10 on page 47 of my
2 declaration.

3 BY MR. HANSEN:

4 Q So what paragraph were you just reading
5 from?

6 MR. MASON: Objection. Form.

7 THE WITNESS: Paragraph 72 starting on
8 page 45 of my declaration.

9 BY MR. HANSEN:

10 Q I'm sorry. Paragraph -- could you repeat
11 one more time? Paragraph --

12 A 72 starting on page 45 of my declaration.

13 Q So let's step through this just a little
14 bit. You say that Patel discloses a transceiver
15 coupled to a glucose sensor that exchanges data with
16 a monitor over a two-way communication, correct?

17 That's what you state in paragraph 72?

18 A Calibrates a sensor -- I'm sorry. I think
19 so, but can you please repeat your question?

20 Q You start by saying Patel 2009 discloses a
21 transceiver coupled to a subcutaneous glucose sensor
22 that exchanges data with a monitor over a two-way
23 communication; is that correct?

24 A Yes. That's correct.

25 Q Okay. And so the transceiver in Patel, the

1 monitor, what you've described here as the monitor
2 is the primary receiver?

3 MR. MASON: Can you repeat the question,
4 Victoria?

5 MADAM COURT REPORTER: "QUESTION: And so
6 the transceiver in Patel, the monitor, what
7 you've described here as the monitor is the
8 primary receiver?"

9 BY MR. HANSEN:

10 Q Let me restate the question. I may have
11 misspoken.

12 So the transceiver is in two-way
13 communication with the monitor. And you're saying
14 that the monitor is the primary receiver; is that
15 correct?

16 A Is a receiver unit that claim 29 calls for.

17 Q Okay. And then in the next sentence of
18 paragraph 72 you state, The transceiver encompasses
19 a processor that calibrates the sensor and
20 calculates glucose values, a memory that stores
21 these calculated glucose values, and a battery; is
22 that correct?

23 A That is correct.

24 Q Okay. And you say, The monitor displays
25 glucose levels and trend graphs, right?

1 A Correct.

2 Q And then you say, The transceiver --
3 finally, transceiver 100 maintains two-way
4 communications with various devices including
5 monitor 200, infusion pump 210, PDA 230, cellular
6 phone 240, and blood glucose meter 250 to exchange
7 glucose values, calibration data, and other
8 information, correct?

9 A Correct.

10 Q And are these various devices then
11 secondary receivers?

12 A No. That's not what I'm saying. What I'm
13 saying is the watch is the secondary receiver
14 pursuant to claim 29. And those are potential
15 receiver units that claim 29 calls for.

16 Q I thought you said that the monitor was the
17 primary receiver unit in Patel 2009. You just told
18 me that a minute ago.

19 MR. MASON: Objection. Form.

20 THE WITNESS: I don't recall saying that.
21 I think what I said was what's articulated in
22 figure 11 on page 47 are the different devices
23 that the glucose data can be sent to under
24 Patel. And many of those are capable of
25 display and trending glucose data.

1 If I said that that is the monitor --

2 BY MR. HANSEN:

3 Q Well, let me ask you this question: In
4 Patel --

5 A Sorry. Let me clarify this. I want to
6 make sure my testimony is clear here.

7 Patel does call out a monitor in figure 2.
8 Let me be clear on what I'm claiming here.

9 MR. MASON: Victoria, can you tell me what
10 the question pending is now?

11 MADAM COURT REPORTER: He's trying to
12 clarify his answer. There's not actually a
13 question.

14 MR. MASON: What was the preceding
15 question?

16 MADAM COURT REPORTER: "QUESTION: I
17 thought you said that the monitor was the
18 primary receiver unit in Patel 2009. You just
19 told me that a minute ago."

20 MR. MASON: Okay. Thanks.

21 MADAM COURT REPORTER: He's trying to
22 clarify that.

23 THE WITNESS: Yeah. I think Patel is
24 describing these devices as the monitor. An
25 example of the monitor, given it has the

1 ability to receive glucose, trend glucose, and
2 process other -- other information. So I just
3 wanted to be clear about that.

4 So these things that Patel's
5 describing are essentially a monitor. And
6 while this concept of primary receiving unit
7 doesn't exist, it would be a receiver unit
8 under claim 29.

9 BY MR. HANSEN:

10 Q What would be a receiver unit under claim
11 29?

12 A The monitor devices that are described in
13 Patel.

14 Q You're saying the devices in figure 11 of
15 Patel?

16 A Figure 11 of Patel. Right. These devices
17 Patel refers to as monitors, capable of receiving
18 glucose data, displaying glucose data, trending
19 glucose data.

20 Q Okay. So let's talk about the devices in
21 figure 11. Does the blood glucose meter in
22 figure 11 control the sensor transceiver?

23 MR. MASON: Objection. Form.

24 THE WITNESS: I'm not sure what you mean
25 by "control." Can you tell me what you mean by

1 that question?

2 BY MR. HANSEN:

3 Q You pointed to the blood glucose meter in
4 figure 11 and you said that that could be the
5 receiver required by claim 29, correct?

6 A Correct.

7 Q My question is, that blood glucose meter,
8 does it control the sensor transceiver?

9 MR. MASON: Objection. Form.

10 BY MR. HANSEN:

11 Q Or does the sensor transceiver have its own
12 independent brain that controls it?

13 MR. MASON: Objection. Form.

14 THE WITNESS: So Patel 2009, Exhibit 1212,
15 describes, The blood glucose meter in
16 paragraph 77 capable of receiving a signal from
17 the transceiver may automatically/optionally
18 receive the broadcast information. Thus, the
19 transceiver may not need [sic] reciprocally
20 connected to the device by wire or wireless
21 means to communicate information.

22 So what Patel is describing is
23 communication of glucose data to the blood
24 glucose meter, where the blood glucose meter
25 can continue to communicate that outbound or

1 use it within its own application.

2 And again, I don't see control
3 anywhere in claim 29 as a requirement. Claim
4 29 just requires a receiver unit is configured
5 to include a limited number of functions.

6 BY MR. HANSEN:

7 Q Now you're talking about the secondary
8 receiver unit, right?

9 A Correct.

10 Q But you were telling me that the blood
11 glucose meter is the primary receiver unit in your
12 combination?

13 MR. MASON: Objection. Form.

14 THE WITNESS: It's the receiver unit in
15 the definition of the claim language for claim
16 29. That's what we're talking about, right?

17 BY MR. HANSEN:

18 Q Yeah.

19 A The primary -- it doesn't exist. There's
20 only receiver unit and secondary receiver unit in
21 the claim language.

22 Q So this is my question: In figure 11
23 there's a sensor transceiver, correct?

24 A Figure 11 of?

25 Q Patel 2009, the figure that you've

1 reproduced with annotations on page 47 of your
2 declaration.

3 A Okay. Yes, I see that.

4 Q Okay. That sensor transceiver includes --
5 I believe you said in paragraph 42, a processor.

6 MR. MASON: Objection. Form.

7 THE WITNESS: In paragraph 72 I say that
8 the transceiver encompasses a processor that
9 calibrates a sensor and calculates glucose
10 values, a memory that stores these glucose
11 values and a battery.

12 BY MR. HANSEN:

13 Q That processor in the transceiver, does
14 that control the receiver -- I'm sorry. The
15 processor in the transceiver, does that control the
16 transceiver?

17 A I'm confused now. The processor in the
18 transceiver, does it control the transceiver; is
19 that your question?

20 Q Yes.

21 A Which transceiver are we talking about?
22 The glucose sensor transceiver?

23 Q Yes. You've reproduced figure 2 from Patel
24 on page 45 and you have added the word
25 "transceiver." Do you see that?

1 A I do.

2 Q And you say that that transceiver has a
3 processor, right?

4 A I see that.

5 Q Okay. Does that processor in Patel control
6 the transceiver or is there some other processor
7 somewhere in the system that controls the
8 transceiver?

9 MR. MASON: Objection. Form.

10 THE WITNESS: So Patel in paragraph 8
11 talks about the transmitter's coupled to the
12 processor for transmitting data to at least one
13 remote device. That's midway through
14 paragraph 8 of Patel 2009.

15 So that's what Patel is claiming the
16 processor is doing here. It's processing
17 glucose values. But you're asking if it can
18 control some other device off body?

19 Or do I not understand what your
20 question is?

21 BY MR. HANSEN:

22 Q Well, try listening to the question instead
23 of formulating your own question. So I'll restate
24 my question.

25 MR. MASON: Objection. Form.

1 BY MR. HANSEN:

2 Q What processor controls the sensor
3 transceiver in Patel?

4 Is it the processor that's part of the
5 transceiver or is it some other processor elsewhere
6 in the system?

7 MR. MASON: Objection. Form.

8 THE WITNESS: So the processor on the
9 glucose sensor transceiver clearly controls the
10 glucose sensor transceiver. But a POSITA would
11 also recognize that commands outside of that
12 transceiver can cause it to operate in
13 different ways. For example, updating the data
14 repetition rate.

15 So in that case it would be a command
16 received from another processor to the
17 transceiver unit that's now being processed as
18 a control point for the glucose sensor
19 transceiver. So I hope I'm answering your
20 question clearly.

21 In the absence of any two-way
22 communication, the processor on the processor
23 and sensor transceiver is clearly operating the
24 transceiver and the processor glucose sensor.

25 But certainly a POSITA would

1 recognize that off-body other command can be
2 sent from another processor and control that
3 sensor to go to sleep, change its repetition
4 rate. These are common behaviors a network
5 system can operate under.

6 MR. MASON: We've been going about an
7 hour, just to let you know.

8 BY MR. HANSEN:

9 Q Let's talk specifically about Paradigm.
10 In the Paradigm system, does the pump
11 control the transceiver or does the processor on the
12 transceiver control the transceiver?

13 MR. MASON: Objection. Form.

14 THE WITNESS: So the processor on the
15 sensor transceiver would be controlling the
16 sensor transceiver.

17 MR. HANSEN: Okay. Your counsel suggested
18 we take a short break. If we can limit it to
19 five minutes, I'd appreciate it.

20 MR. MASON: Okay.

21 (Off record from 1:31 p.m. to 1:42 p.m.)

22 BY MR. HANSEN:

23 Q Mr. Gross, could you refer, please, to your
24 declaration where you've provided figure 11 on
25 page 47 of your declaration?

1 A Okay. I'm there.

2 Q So if I understand you correctly, an
3 example of a primary receiver would be computer 220
4 in figure 11?

5 MR. MASON: Objection. Form.

6 THE WITNESS: Patel calls it a monitor,
7 not a primary receiver. But yes, I think we
8 discussed what a receiver is. It receives
9 glucose data for trending, display, and
10 processing, et cetera. So yes, a computer
11 would be a monitor under Patel.

12 BY MR. HANSEN:

13 Q And the computer in figure 11 could be a
14 computer on someone's desktop somewhere?

15 MR. MASON: Objection. Form.

16 THE WITNESS: I'm unaware that Patel
17 limits that. And I don't believe I made that
18 limitation in my declaration.

19 BY MR. HANSEN:

20 Q I didn't ask it in a limited way. I said
21 the computer 220 could be a computer on a desktop
22 somewhere?

23 A It certainly can be in a certain
24 configuration.

25 Q And that would be consistent with your

1 understanding of Patel 2009?

2 MR. MASON: Objection. Form.

3 THE WITNESS: Yes. I think a computer on
4 a desktop could be a receiver or a monitor
5 under Patel 2009.

6 BY MR. HANSEN:

7 Q And in that scenario, the receiver or
8 monitor, the computer that you say could be
9 understood to be a receiver or monitor, would only
10 be in communication with the transceiver when they
11 were in close proximity, correct?

12 MR. MASON: Objection. Form.

13 THE WITNESS: That's at least one way to
14 make the communication, correct.

15 BY MR. HANSEN:

16 Q So if the user was, for example, in a
17 different building or a different state or a
18 different city, the computer and the transceiver
19 would not be in communication with each other,
20 correct?

21 MR. MASON: Objection. Form.

22 THE WITNESS: Depending on the radio
23 connection, that may be correct.

24 BY MR. HANSEN:

25 Q There's no description in Patel 2009 of a

1 computer that would be in communication with the
2 transceiver if it was in a different state, for
3 example?

4 MR. MASON: Objection. Form.

5 THE WITNESS: I'm not sure if that's
6 accurate. Patel 2009 does describe a
7 communication station, a sensor set
8 communicating to a telemetered characteristic
9 sensor transceiver. And that configuration, if
10 the communication is over a cellular network or
11 some other communication network, it is
12 conceivable that the sensor could be
13 communicating to a PC in a different state.

14 BY MR. HANSEN:

15 Q And I'm not asking you about what's, you
16 know, conceivable, what you think could be done.
17 I'm asking about what's actually described in Patel
18 2009.

19 Is that described in Patel 2009?

20 MR. MASON: Objection. Form.

21 THE WITNESS: So paragraph 45 of Patel
22 2009 is referring back to figure 10 of Patel
23 2009 which describes the computer communication
24 station, telemetered character successor
25 transceiver and sensor set. Whereas, the data

1 may be exchanged between the transceiver and a
2 remotely located computer, such as a personal
3 computer, personal digital assistant or the
4 like, through a communication station,
5 reference says 8, over communication lines.

6 So I think Patel does specifically
7 teach that is an embodiment and a configuration
8 that's implementable and a POSITA would have
9 recognized that.

10 BY MR. HANSEN:

11 Q And this communication station, what would
12 that be? Is that described?

13 A So Patel 2009 describes a communication
14 station as a communication -- essentially a hub
15 through modem or wireless connections.

16 So I think a POSITA would imply or would
17 understand that this is not a magic box. It's a hub
18 that can do store forward over from one radio to
19 another. In fact, we've deployed systems like that
20 in other monitoring systems.

21 Q If the computer was in another state --

22 A Yeah.

23 Q That's not my question.

24 A I'm sorry.

25 Q I'm starting my question. If the computer

1 was in another state, would the user be able to see
2 the display on the computer?

3 MR. MASON: Objection. Form. Scope.

4 THE WITNESS: If he didn't have a camera
5 looking at the display, probably not.

6 BY MR. HANSEN:

7 Q Now, in figure 11 of Patel 2009, which you
8 have in an annotated form on page 47 of your expert
9 report, these devices, the blood glucose meter, the
10 characteristic monitor, the infusion pump, the
11 computer, the PDA, the cell phone, they're
12 exchanging data with the sensor transceiver,
13 correct?

14 A Correct. That's the communication links.

15 Q As depicted in Patel 2009, do these various
16 devices exchange data with anything other than the
17 sensor transceiver?

18 MR. MASON: Objection. Form.

19 THE WITNESS: I can envision or I can
20 imagine that they could. Computer, for
21 example, may not be dedicated just to the
22 sensor transceiver. Same for a PDA. Same for
23 a cell phone.

24 BY MR. HANSEN:

25 Q In your system, in your combination, do

1 these devices receive data from anything other than
2 the sensor transceiver?

3 MR. MASON: Objection. Form.

4 THE WITNESS: In the Patel/Paradigm
5 combination?

6 BY MR. HANSEN:

7 Q In the Patel/Paradigm/Goldsmith
8 combination.

9 A So in the Patel/Paradigm/Goldsmith
10 combination, they don't need to. It's certainly
11 conceivable that they could.

12 Q In your system, your Patel
13 2009/Paradigm/Goldsmith combination, is the primary
14 receiver receiving data from the OBU, from the
15 sensor transceiver?

16 A So in the combined Patel
17 2009/Paradigm/Goldsmith, your question was related
18 to the receiver or the secondary receiver?

19 Q The receiver. In your combination, is the
20 receiver receiving data from the sensor transceiver,
21 or in other words the OBU?

22 A Yes.

23 Q And in your combination, is the receiver
24 receiving data from any source other than the sensor
25 transceiver or OBU?

1 MR. MASON: Objection. Form.

2 THE WITNESS: In the
3 Goldsmith/Paradigm/Patel combination, the
4 receiver is also in communication with the
5 secondary receiver under indirect communication
6 methods. So it would be in communication with
7 the secondary receiver as well as with the
8 sensor transceiver.

9 BY MR. HANSEN:

10 Q Okay. You seem to have changed my question
11 again. I didn't ask you what it was in
12 communication with. I asked you, was it receiving
13 data from?

14 MR. MASON: Objection. Form.

15 BY MR. HANSEN:

16 Q So with respect to the primary receiver in
17 your combination, it receives data from the sensor
18 transceiver or OBU. Does it receive data from any
19 other source?

20 A It could.

21 Q Where is that disclosed?

22 A If, for example, the other device is the
23 secondary receiver, it is receiving acknowledgement
24 of data that it was sent from the receiver. So that
25 would be communication and that would be receiving

1 data of an acknowledgement nature.

2 Q And where is that disclosed?

3 A Where is that disclosed in --

4 Q In the references that constitute your
5 combination.

6 A So a POSITA would recognize that if you're
7 communicating data to the secondary receiver,
8 standard practice would be to acknowledge the data
9 that the secondary receiver received from the
10 receiver such that you could be sure that that was
11 communicated correctly. So that's common practice
12 when you're dealing with wireless communication
13 links.

14 Q Okay. So --

15 A I think I refer to that in that a POSITA
16 would know.

17 Q So the primary receiver could receive
18 acknowledgement from the secondary receiver?

19 A The receiver that's sent the secondary
20 receiver data in an indirect connection would likely
21 receive an acknowledgement from that secondary
22 receiver that it got the data it was sent.

23 Q Would the primary receiver receive glucose
24 data from the secondary receiver?

25 MR. MASON: Objection. Form.

1 THE WITNESS: While it could, I'm not sure
2 a POSITA would implement it that way.

3 BY MR. HANSEN:

4 Q Is that described anywhere in your
5 combination?

6 A Of the secondary receiver sending data to
7 the intermediary device, the receiver?

8 Q Sending glucose data to the intermediary
9 device.

10 A I don't believe so. Do you have a
11 reference that you believe I've said that?

12 Q Just asking you the question.

13 We have one housekeeping matter. So your
14 declaration, which is Exhibit 1208, I added some
15 highlighting to that.

16 A Yes.

17 Q And so for the sake of having a clean
18 record, I think we need to designate the highlighted
19 version as a separate exhibit. So we're going to
20 designate the highlighted version of Exhibit 1208 as
21 Exhibit 2243.

22 And unfortunately, Mr. Gross, it means
23 you're going to have to give up your copy there to
24 the court reporter. But we will designate the
25 highlighted version as Exhibit 2243, the highlighted

1 version of Exhibit 1208. Is that okay?

2 MR. MASON: Yes.

3 (Exhibit 2243, Declaration of Brian D.
4 Gross re Methods and Systems for Early
5 Signal Attenuation Detection and Processing
6 reflecting highlighting applied during
7 deposition, was marked.)

8 MR. HANSEN: All right. I have no further
9 questions at this time.

10 MR. MASON: Give us just five minutes.

11 (Off record from 2:00 p.m. to 2:02 p.m.)

12 MR. MASON: We can go back on the record.
13 We have no questions on redirect. And that's
14 it. We will read and sign.

15 (Proceedings ended at 2:02 p.m.)

16 (Signature reserved.)

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1 REPORTER'S CERTIFICATE

2 I, VICTORIA A. GUERRERO, Certified Shorthand Reporter,
3 Registered Merit Reporter, Registered Professional Reporter,
4 Certified Realtime Reporter, in and for the State of Oregon
5 do hereby certify that, pursuant to notice, BRIAN D. GROSS
6 personally appeared before me at the time and place
7 mentioned in the caption herein; that the witness was by me
8 first duly sworn/affirmed under oath and examined upon oral
9 interrogatories propounded by counsel; that said
10 examination, together with the testimony of said witness,
11 was taken down by me in stenotype and transcribed through
12 computer-aided transcription; and that the foregoing
13 transcript, pages 1 through 137, review requested by the
14 witness or a party, constitutes a true record of said
15 examination of and testimony given by said witness, and of
16 all other oral proceedings had during the taking of said
17 deposition, and of the whole thereof.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 at Portland, Oregon, this Sunday, November 24, 2024.

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21 
22

23 Victoria A. Guerrero, CSR, RDR, RMR, CRR
Thompson Court Reporters
24 Oregon CSR No. 14-0428 (exp. 9-30-2027)
Washington CCR No. 3293 (exp. 3-15-2025)
25 California CSR No. 8370 (exp. 3-15-2025)
Hawaii CSR No. 490 (exp. 12-31-2024)

1 CASE NAME : DEXCOM vs ABBOTT
2 DEPOSITION OF: BRIAN GROSS
3 DATE TAKEN: NOVEMBER 21, 2024
4

5 This is to certify that I have read the
6 transcript of my Deposition taken in the above-entitled
7 cause and that the foregoing transcript accurately
8 states the questions asked and the answers given by me
9 as they now appear.

10 Please check one:
11 _____ I made no corrections
12 _____ Number of corrections made
13 _____
14 BRIAN GROSS

14 SUBSCRIBED AND SWORN TO
15 Before me this _____ day
16 of _____ A.D., 2023.

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Notary Public

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CORRECTION PAGE

CASE NAME : DEXCOM vs ABBOTT
DEPOSITION OF: BRIAN GROSS
DATE TAKEN: NOVEMBER 21, 2024

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