

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DEXCOM, INC.,
Petitioner,

v.

ABBOTT DIABETES CARE INC.,
Patent Owner.

IPR2024-00521
Patent 11,298,056

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b) and the Federal Rules of Evidence, Petitioner DexCom, Inc. (“Petitioner”) hereby submits the following objections to the evidence Patent Owner filed with its Patent Owner Response dated December 6, 2024 (Paper 17). Petitioner’s objections apply equally to Patent Owner’s reliance on this evidence in any subsequently filed documents or hearing in this proceeding.

Petitioner objects as follows to the admissibility of the following evidence.

Evidence	Objections
Exhibit 2213 (Declaration of Eugene E. Wright, Jr. MD)	Relevance: Patent Owner has not established a relationship between paragraphs 67-74, 79-83, 103-105, 148, 159-162 of Exhibit 2213 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by these paragraphs is substantially outweighed by their risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the following paragraphs of Exhibit 2213 are not cited in the Patent Owner’s Response or Preliminary Response and, therefore, are not relevant, and risks confusing the issues and prejudicing Petitioner: ¶¶ 34-38, 42-54, 56, 60-74, 84-85, 91-92, 95-96, 111-115, 122, 139-145, 148, 164-166, 170, 176, 178-179, 198-200, 204-207. FRE 402; FRE 403; 37 C.F.R. § 42.61. Improper Expert Testimony: Paragraphs 135-138 and 140 of Exhibit 2213 will not “help the trier of fact to understand the evidence or to determine a fact in issue,” are

Evidence	Objections
	not based on the application of Dr. Wright’s “scientific, technical, or other specialized knowledge,” are not “based on sufficient facts or data,” and are not “the product of reliable principles and methods.” FRE 702.
Exhibit 2215 (Declaration of Aaron Striegel, Ph.D.)	Relevance: Patent Owner has not established a relationship between paragraphs 45-46 of Exhibit 2215 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by these paragraphs is substantially outweighed by their risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the following paragraphs of Exhibit 2215 are not cited in the Patent Owner’s Response or Preliminary Response and, therefore, are not relevant, and risks confusing the issues and prejudicing Petitioner: ¶¶ 27-33, 63-65. FRE 402; FRE 403; 37 C.F.R. § 42.61.
Exhibit 2216 (Capon et al., Continuous Glucose Monitoring Sensors for Diabetes Management: A Review of Technologies and Applications, J. Diab. Metab. 43:383-397 (2019))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2217	Authenticity: The exhibit is not authenticated.

Evidence	Objections
(American Diabetes Association, Role of Continuous Glucose Monitoring in Diabetes Treatment (2018), available at https://pubmed.ncbi.nlm.nih.gov/30958664/)	The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2218 (The MiniMed Paradigm® REAL-Teim Insulin Pump User Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901.
Exhibit 2219 (DexCom STS-7 Continuous Glucose Monitoring System User's Guide Submitted Under FCC ID PH29402)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between Exhibit 2219 and facts that are of consequence in determining this action. FRE 401(b). Specifically, Exhibit 2219 is only cited in paragraph 67 of Exhibit 2213 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and

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	prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2220 (DexCom G6 Continuous Glucose Monitoring System User Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between Exhibit 2220 and facts that are of consequence in determining this action. FRE 401(b). Specifically, Exhibit 2220 is only cited in paragraphs 68-71 of Exhibit 2213 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies,

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	including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2221 (Abbott FreeStyle Navigator Continuous Glucose Monitoring System User's Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between Exhibit 2221 and facts that are of consequence in determining this action. FRE 401(b). Specifically, Exhibit 2221 is only cited in paragraph 72 of Exhibit 2213 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.

Evidence	Objections
Exhibit 2222 (Abbott FreeStyle Libre 3 Continuous Glucose Monitoring System User's Manual)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between Exhibit 2222 and facts that are of consequence in determining this action. FRE 401(b). Specifically, Exhibit 2222 is only cited in paragraph 73 of Exhibit 2213 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2223 (U.S. Patent No. 10,085,640)	Relevance: Patent Owner has not established a relationship between Exhibit 2223 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value

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	provided by this evidence is substantially outweighed by its risks of confusing the issues. FRE 403; <i>see e.g., Wyers v. Master Lock Co.</i> , 616 F.3d 1231, 1242, 1245 (Fed. Cir. 2010); <i>Key Tech., Inc. v. Simco/Ramic Corp.</i> , 137 F.R.D. 322, 324 (D. Or. 1991).
Exhibit 2224 (U.S. Patent No. 9,996,668)	Relevance: Patent Owner has not established a relationship between Exhibit 2224 and facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues. FRE 403; <i>see e.g., Wyers v. Master Lock Co.</i> , 616 F.3d 1231, 1242, 1245 (Fed. Cir. 2010); <i>Key Tech., Inc. v. Simco/Ramic Corp.</i> , 137 F.R.D. 322, 324 (D. Or. 1991).
Exhibit 2225 (Das et al., Review— Electrochemistry and Other Emerging Technologies for Continuous Glucose Monitoring Devices, ECS Sensors Plus (2022))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2226 (Almurashi et al., Emerging Diabetes Technologies: Continuous	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901.

Evidence	Objections
Glucose Monitors/Artificial Pancreases, J. Indian Inst. Sci. (2023))	Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2228 (Centers for Disease Control and Prevention—National Diabetes Statistics Report, available at https://www.cdc.gov/diabetes/data/statistics-report/diagnosed-undiagnosed-diabetes.html .)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: The exhibit is not cited or discussed in Patent Owner’s Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2229 (Garg et al., Flash Glucose Monitoring: The Future Is Here, Diabetes Tech. & Therapeutics 19.S2 (2017))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: The exhibit is not cited or discussed in Patent Owner’s Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61.

Evidence	Objections
	Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2230 (DexCom SEVEN Plus Users Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Any probative value provided by Exhibit 2230 is substantially outweighed by its risks of confusing issues, needlessly presenting cumulative evidence, and prejudicing Petitioner. FRE 403. For example, citation to Exhibit 2230 in paragraph 68 of Exhibit 2213 regard statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2231 (DexCom G5 Mobile CGM System User Guide)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Any probative value provided by Exhibit 2231 is substantially outweighed by its risks of confusing the issues, needlessly

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	presenting cumulative evidence, and prejudicing Petitioner. FRE 403. For example, citation to Exhibit 2231 in paragraph 68 of Exhibit 2213 regard statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit’s probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2233 (Atmel Product Guide (Winter 2008), available at https://media.digikey.com/pdf/Data%20Sheets/Atmel%20PDFs/Products%20Select%20Guide.pdf)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between Exhibit 2233 and facts that are of consequence in determining this action. Specifically, Exhibit 2233 is only cited in paragraph 45 of Exhibit 2215 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner’s Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and

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	prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit's probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2234 (Atmel – Atmega169P Datasheet, available at https://ww1.microchip.com/downloads/en/DeviceDoc/doc8018.pdf)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Relevance: Patent Owner has not established a relationship between Exhibit 2234 and facts that are of consequence in determining this action. Specifically, Exhibit 2234 is only cited in paragraph 46 of Exhibit 2215 regarding statements unrelated to facts that are of consequence in determining this action. FRE 401(b), 402. Any probative value provided by this evidence is substantially outweighed by its risks of confusing the issues and prejudicing Petitioner. FRE 403. Additionally, the exhibit is not cited or discussed in Patent Owner's Response or Preliminary Response and, therefore, is not relevant, and risks confusing the issues and prejudicing Petitioner. FRE 402; FRE 403; 37 C.F.R. § 42.61.

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	Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies, including because the exhibit’s probative value is substantially outweighed by its prejudicial effect. FRE 801-807, FRE 703.
Exhibit 2235 (American Diabetes Association (ADA) Standards of Medical Care in Diabetes—2007)	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.
Exhibit 2239 (Bergenstal, Ahmann et al., <i>Recommendations for Standardizing Glucose Reporting and Analysis to Optimize Clinical Decision Making in Diabetes: The Ambulatory Glucose Profile (AGP)</i> , J. Diabetes Tech. & Therapeutics 15(3), 198-211 (2013))	Authenticity: The exhibit is not authenticated. The exhibit is not associated with a declaration or any other source of evidence that establishes its authenticity. FRE 901. Hearsay: The exhibit constitutes inadmissible hearsay and no hearsay exception applies. FRE 801-807.

Respectfully submitted,

Dated: December 13, 2024

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CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6 (E)(4)

The undersigned certifies that on December 13, 2024, a complete copy of
PETITIONER'S OBJECTION TO PATENT OWNER'S EVIDENCE was
served on counsel for Patent Owner via electronic mail as follows:

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