

Paper No. ____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ABBOTT DIABETES CARE INC.,
Petitioner,

v.

DEXCOM, INC.,
Patent Owner.

Case No. IPR2024-00840
Patent No. 9,119,528

PATENT OWNER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. §42.64(b)(1), Patent Owner DexCom, Inc. submits the following objections to evidence submitted with the Petition in the instant proceeding. These objections have been timely filed within ten business days of the institution of trial in this matter.

A. Exhibit 1003 (Declaration of Dr. David Rodbard)

Patent Owner objects to Exhibit 1003 and to Dr. Rodbard's opinions therein as inadmissible under at least Fed. R. Evid. ("FRE") 602, FRE 702, and 37 C.F.R. §42.62 for all statements and opinions regarding the alleged prior art references, their comparison to the challenged claims, anticipation or obviousness of the challenged claims, the defining characteristics of a person of ordinary skill in the art ("POSA"), and the understanding and knowledge of a POSA, on account of Petitioner's failure to show by a preponderance of the evidence that Dr. Rodbard has the necessary relevant expertise or that his testimony satisfies the other criteria of FRE 702.

B. Exhibits 1006, 1007, 1008, 1010, 1011, 1013, 1014, 1015, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1025, 1026, 1031, 1032

Patent owner objects to Exhibits 1006, 1007, 1008, 1010, 1011, 1013, 1014, 1015, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1025, 1026, 1031, and 1032 for the following reasons:

- For lack of relevance under FRE 402 at least because Petitioner has failed to show by a preponderance of the evidence that any of these exhibits is prior art;
- For lack of authentication under FRE 901; and
- As hearsay under FRE 801-802 to the extent statements therein are relied on for the truth of the matter asserted.

Patent Owner likewise objects to any portion of the Petition and Dr.

Rodbard's Declaration (Ex. 1003) purporting to rely on any of Exhibits 1006, 1007, 1008, 1010, 1011, 1013, 1014, 1015, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1025, 1026, 1031, or 1032.

C. Exhibits 1028, 1029

Patent owner objects to each of Exhibits 1028 and 1029 as irrelevant under FRE 402 and as confusing, prejudicial, and a waste of time under FRE 403 to the extent these exhibits are relied on to establish findings by a foreign tribunal applying foreign law based on a different record than the record presented here.

Patent Owner likewise objects to any portion of the Petition and Dr.

Rodbard's Declaration (Ex. 1003) purporting to rely on any of Exhibits 1028 or 1029.

D. Exhibit 1027 (Declaration of Sylvia D. Hall-Ellis)

Patent Owner objects to Exhibit 1027 and to Dr. Hall-Ellis's opinions therein as inadmissible under at least FRE 602, FRE 702, and 37 C.F.R. §42.62 on account of Petitioner's failure to show by a preponderance of the evidence that Dr. Hall-Ellis's testimony satisfies the criteria of FRE 702.

Respectfully submitted,
DexCom, Inc.

Date: December 5, 2024

/Anant K. Saraswat/

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CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (E)(4)

I certify that on December 5, 2024, I caused a copy of the foregoing document, including any exhibits filed therewith, to be served via electronic mail, as previously consented to by Petitioner, upon the following:

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Date: December 5, 2024

/Dara Del Rosario/

Dara Del Rosario

Paralegal

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