IN THE 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. IPR2024-00891
Patent No. 11,020,031

PETITIONER'S EXPLANATION OF PARALLEL PETITIONS CHALLENGING U.S. PATENT NO. 11,020,031

In accordance with the USPTO's PTAB Trial Practice Guide, Petitioner Abbott Diabetes Care Inc. ("Petitioner") submits this explanation for filing two petitions for *inter partes* review of U.S. Patent No. 11,020,031 (the "'031 patent") filed in IPR2024-00890 ("Petition 1") and IPR2024-00891 ("Petition 2"). *See* "Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019" ("TPG") at 59-60.

Two petitions are required because Petitioner is challenging a large number of claims, all of which have been asserted by Patent Owner against Petitioner in district court litigation (40 claims, including five independent claims). *See id.*; *see also Microsoft Corp. v. IPA Techs. Inc.*, IPR2019-00810, Paper 12 at 13-14 (Oct. 16, 2019) (determining that multiple petitions were reasonable when a petitioner was "[f]aced with word count limitations and a large number of challenged claims"). Indeed, the claim listings alone for the challenged claims include 2,226 words, collectively. The Board should institute both *inter partes* reviews.

I. EXPLANATION OF THE MATERIAL DIFFERENCES BETWEEN THE TWO PETITIONS

The petitions challenge different claims, but over the same prior art references:

Petition	Challenged claims of the ’031 patent	Ground
Petition 1: IPR2024-00890	1-2, 4, 6-15, 20-22	Ground 1: §102 and/or §103 over Zhang
	1-2, 4, 6-15, 20-22	Ground 2: §102 and/or §103 over Shin
Petition 2: IPR2024-00891	23-46	Ground 1: §102 and/or §103 over Zhang
	23-46	Ground 2: §102 and/or §103 over Shin

The length and number of challenged claims justifies multiple petitions. Petitioner challenges 40 claims, including five independent claims, all of which Patent Owner has asserted in the district court litigation. Petition 1 challenges 16 claims, including two independent claims, and Petition 2 challenges 24 claims, including three independent claims. The challenged claims themselves are lengthy and recite more than 2,000 words in total. Petitioner has limited its challenge to two grounds per petition, but even those two grounds are lengthy because of the explanations required to show how the prior art aligns with the lengthy claim elements. Petitioner thus requires additional words to challenge the asserted claims, despite its best efforts to narrow the unpatentability issues presented to the Board.

II. RANKING OF THE PETITIONS

Given the overlapping issues raised in the petitions, the burden of addressing the grounds of both petitions would not be substantially greater than the burden of addressing the grounds of either petition alone, and the Board should institute *inter*

partes review on both petitions. In addition, the Board and the parties can obtain efficiencies by holding a single oral hearing and consolidating depositions in both proceedings. In accordance with the Board's direction that Petitioner should identify "a ranking of the petitions in the order in which it wishes the Board to consider the merits" (TPG at 60), though, Petitioner ranks Petition 1 first.

Date: May 10, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6 and 42.105, I hereby certify that on May 10, 2024, I caused a true and correct copy of the foregoing PETITIONER'S EXPLANATION OF PARALLEL PETITIONS CHALLENGING U.S. PATENT NO. 11,020,031, to be served via Priority Mail Express on the Patent Owner at the following correspondence address of record as listed on the USPTO Patent Center:

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A courtesy copy was also served via electronic mail on Patent Owner's counsel of record in District Court matter:

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