



UPC\_CFI\_395/2023  
Procedural Order  
of the Court of First Instance of the Unified Patent Court  
delivered on 25/11/2024

APPLICANT

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| 1) DexCom, Inc.<br>6340 Sequence Drive<br>92121 - San Diego, CA - US | Represented by<br>Anne-Charlotte Le Bihan |
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RESPONDENTS

- |  |                                       |
|--|---------------------------------------|
| 1) Abbott Logistics B.V.<br>Postbus 365<br>8000AJ Zwolle – NL                  | Represented by<br>Christian Dekoninck |
| 2) Abbott Diagnostics GmbH<br>Max-Planck-Ring 2<br>65205 Wiesbaden – DE        | Represented by<br>Christian Dekoninck |
| 3) Abbott France<br>40/48 Rue d'Arceuil<br>94593 Rungis CP 10457 France        | Represented by<br>François Pochart    |
| 4) Abbott Oy<br>Karvaamokuja 2 A<br>00380 Helsinki - FI                        | Represented by<br>Christian Dekoninck |
| 5) Abbott Diabetes Care Inc.<br>1360 South Loop Road<br>94502 Alameda, CA - US | Represented by<br>Christian Dekoninck |

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|-----|---|---------------------------------------|
| 6)  | Newyu, Inc.<br>100 Abbott Park Road,<br>D367 AP6D Sales Tax<br>60064 Abbott Park, Illinois - US | Represented by<br>Christian Dekoninck |
| 7)  | Abbott Laboratories<br>100 Abbott Park Road<br>60064 Abbott Park, IL - US                       | Represented by<br>Christian Dekoninck |
| 8)  | Abbott Laboratories A/S<br>Emdrupvej 28C<br>2100 Copenhagen - DK                                | Represented by<br>Christian Dekoninck |
| 9)  | Abbott Scandinavia Aktiebolag<br>Hemvärnsgatan 9<br>171 54 Solna - SE                           | Represented by<br>Christian Dekoninck |
| 10) | Abbott<br>Avenue Einstein 14<br>1300 Wavre - BE   | Represented by<br>Christian Dekoninck |
| 11) | Abbott GmbH<br>Max-Planck-Ring 2<br>65205 Wiesbaden - DE  | Represented<br>Christian Dekoninck    |
| 12) | Abbott Gesellschaft m.b.H.<br>Perfektastrasse 84A<br>1230 Wien - AT                             | Represented by<br>Christian Dekoninck |
| 13) | Abbott S.r.l.<br>Viale Giorgio Ribotta 9<br>00144 Rome - IT                                     | Represented by<br>Christian Dekoninck |
| 14) | Abbott B.V.<br>Wegalaan 9<br>2132JD Hoofddorp - NL  | Represented by<br>Christian Dekoninck |

## PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor</i>
EP3831282	DexCom, Inc.

## DECIDING JUDGE

Presiding judge

Camille Lignières

LANGUAGE OF PROCEEDINGS: English

### ORDER

#### *Facts and procedure*

The oral hearing in the infringement action based on DEXCOM's patent EP'282 was held on October 30, 2024, the debates were closed on that date and the final decision was announced to be issued on December 11, 2024.

On 12 November 2024, DEXCOM submitted an application pursuant to R. 334.e) and 336 RoP for the Court to communicate with the parties to instruct them about its wishes to comment on the decision rendered by the Regional Court of Munich on November 6, 2024 relating to the validity and infringement of the German part of EP 2,939,158 by Defendants 1 and 11.

In support of its application, DEXCOM argues that:

-the Munich Regional Court rendered, on 6 November 2024, a decision whereby it ruled that claims 1 and 12 of the German part of European patent EP 2 939 158 (hereinafter "EP'158") are indirectly infringed by Defendants 1 and 11 and that the proceedings should not be stayed because the patent is likely to be valid;

- EP'158 is the parent patent of EP'282 and its independent method claim 1 closely resembles claim 1 of EP'282.

- the subject matter of claim 1 of EP'158 is very similar to the subject matter of claim 1 of Auxiliary Request 2 of EP'282.

DEXCOM concludes that the Munich ruling is of relevance to the present proceedings because Defendants had adopted the same misconstruction strategy, which was entirely dismissed by the Munich Regional Court.

In its comments in reply, ABBOTT requests the Court to:

- 1) declare DEXCOM's Application inadmissible arguing that

DEXCOM's application refers to Chapter 8 of the RoP regarding case management and has no legal basis because the rules of Chapter 8 relate to the case management up to the stage after the closure of the interim conference but before the oral hearing.

- 2) receive ABBOTT's comments on DEXCOM's Application and on the decision rendered by the Munich Regional Court on November 26, 2024, arguing that:

-the Regional Civil Courts does not address the validity of the patent in suit;

-EP'282 is related to another invention with specific features (invitation), such as the invitation scheme which is not comprised in Claim 1 of EP'158;

-it follows that the subject matter of claim 1 as granted of EP'282 is different from the one of EP'158 and shows that the German decision regarding the EP'158 case has no relevance regarding the ongoing EP'282 case.

#### *Legal framework*

Rule 334 – Case management powers:

*Except where the Agreement, the Statute or these Rules provide otherwise, the judge-rapporteur, the presiding judge or the panel may:*

(...)

*(c) communicate with the parties to instruct them about wishes or requirements of the Court;*

Rule 336 – Exercise of case management powers:

*The Court may exercise its case management powers on the application by a party or of its own motion, unless otherwise provided.*

#### Grounds

In the UPC Rules of Procedure (RoP), case management powers are not limited to the stage of the proceedings that ends with the closure of the interim procedure, until when the Judge-Rapporteur is in charge of it.

On the contrary, the Court, and in particular the Presiding Judge, could exercise his/her case management powers after the closure of the interim procedure. (ref. Book "Unified Patent Protection in Europe", W. Tillmann and C. Plassmann, 1<sup>st</sup> edition, Oxford University Press, pages 2332 to 2334)

Even after the oral hearing since the case is pending the presiding judge remains in charge of the case management as foreseen in Art. 43 UPCA and Chapter 8 of the RoP on Case management.

Therefore, the DEXCOM's application based on R 334 and R 336 RoP is admissible.

However, the Court considers that this request made at a very late stage of the proceedings is not justified, since the decision in question does not concern the patent at issue in the present case, but its parent patent, which discloses another invention with similar but also different features. Moreover, the Regional Court of Munich, seized by an infringement action, did not examine the

validity issue on the merits but in a context of a request for a stay with regard to the pending nullity proceedings before the Federal Patent Court.

It follows that there is no justification in the present case for an order authorizing the reopening of the debate after the Oral hearing.

Therefore, the Court orders that:

The DEXCOM application is admissible but not well grounded and is dismissed.

This order may be reviewed pursuant to R. 333 RoP.

Issued in Paris, on 25 November 2024.

Camille Lignières, Presiding judge.

#### ORDER DETAILS

Order no. ORD\_62696/2024 in ACTION NUMBER: ACT\_583778/2023

UPC number: UPC\_CFI\_395/2023

Action type: Infringement Action

Related proceeding no. Application No.: 60804/2024

Application Type: Application pursuant to R. 334.e) and 336 RoP