Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC_CoA_901/2025

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 17 April 2026
concerning a request for provisional measures

HEADNOTES

1. A claim feature should not be excluded from the assessment of inventive step merely because it is a non-technical feature, i.e. a feature which, on its own, would be considered a "non-invention" under Art. 52(2) EPC. A feature that is non-technical as such may still contribute to the technical character of the claimed invention as a whole by its interaction with the other claim features. Therefore, the interrelationship and functioning of the claim features must be assessed together.

2. Pursuant to R. 220.1 RoP, only a party adversely affected by a decision may lodge an appeal. The same applies to a cross-appeal pursuant to R. 237 RoP. A cross-appeal is inadmissible if the only purpose of the cross-appeal is to change (a certain part of) the reasoning of the Court in First Instance, which in its result is in favour of the party filing the cross-appeal.

KEYWORDS

Jurisdiction – Claim construction – Infringement – Validity (added matter and inventive step) – Urgency, necessity and balance of interests – Admissibility cross-appeal

APPELLANT (AND APPLICANT BEFORE THE COURT OF FIRST INSTANCE)

Abbott Diabetes Care Inc., 1360 South Loop Road, Alameda, CA 94502, United States of America
(hereinafter referred to as "Appellant")

represented by Christian Dekoninck, attorney at law, Taylor Wessing N.V., Brussels, Belgium

RESPONDENTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Sinocare Inc.**, No. 265, Guyan Road, Hi-Tech Zone, Changsha, Hunan Provence 410205, China
(hereinafter referred to as "Respondent 1")

represented by Thierry Lautier, attorney at law, Bird & Bird AARPI, Paris, France

2. **A. Menarini Diagnostics s.r.l.**, Via Sette Santi 3, 50131 Firenze, Italy
(hereinafter referred to as "Respondent 2")

represented by Edoardo Barbera, attorney at law, Bird & Bird Società tra Avvocati S.r.l., Milan, Italy

PATENT AT ISSUE

EP 3 988 471

PANEL AND DECIDING JUDGES

Panel 3:

Ulrike Voß, presiding judge
Bart van den Broek, legally qualified judge and judge-rapporteur
Nathalie Sabotier, legally qualified judge
Dorothea Hofer, technically qualified judge
Gérard Myon, technically qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order of the Local Division The Hague, 22 October 2025, issued in the action for provisional measures UPC_CFI_587/2025

LANGUAGE OF THE PROCEEDINGS

English

DATE OF THE ORAL HEARING

26 March 2026

FACTS AND REQUESTS OF THE PARTIES

The patent at issue

1. The Appellant is the proprietor of the patent at issue ("the patent"). The patent was filed as a second generation divisional application ("the application") (Exhibit BB026), stemming from EP 3 718 922 and EP 2 473 422. EP 2 473 422 is the parent application and originated from a PCT application published as WO 2011/026053 A1 ("the PCT application") (Exhibit BB025). The application date of the patent is the filing date of the PCT application, namely 30 August 2010. The patent claims priority dates of 31 August 2009, 30 September 2009 and 22 January 2010. The mention of the grant of the patent was published on 26 July 2023 and the patent was registered for unitary patent protection on 31 July 2023. The unitary patent protection covers all Member States of the Agreement on a Unified Patent Court ("UPCA") with the exception of Romania, which joined the UPC system after the registration of the unitary effect of the patent (Art. 18(2) of Regulation (EU) No 1257/2012).

2. The patent was opposed by DexCom Inc. ("Dexcom") at the Opposition Division ("OD") of the European Patent Office ("EPO"). Following the withdrawal of the opposition on 30 December 2024, the OD continued the opposition proceedings on its own motion. The OD maintained the patent in amended form at the oral hearing of 20 March 2025. The written decision was issued by the OD on 24 April 2025 (Exhibit BB050). On 27 June 2025, the appeal term expired and the decision of the OD became irrevocable. Subsequently, on 15 October 2025, the B2-version of the patent was published.

3. Independent claim 1 of the patent relates to a glucose monitoring system. Independent claim 14 relates to a method of glucose monitoring. Claims 1 and 14 read as follows:

   Claim 1

   A glucose monitoring system, comprising:

a glucose sensor (101) configured to be positioned at least in part in contact with interstitial fluid in a body of a user;

a transmitter unit (102) configured to process data indicative of a plurality of monitored glucose levels from the glucose sensor (101); and

a receiver unit (104, 200) comprising a processor, and a user interface having a display (210) and a plurality of actuators, wherein the receiver unit (104, 200) is configured to receive the processed data from the transmitter unit (102), wherein the display (210) is configured to render a plurality of display screens, including at least a home screen (300, 390), an alert screen (1900, 2000, 2100), and a timeline graph screen (400),

wherein the home screen (300, 390) is divided into a plurality of simultaneously displayed panels, wherein a first panel (302, 303) of the plurality of panels is configured to display the plurality of monitored glucose levels, wherein a second panel (320, 360) of the plurality of panels is configured to simultaneously display a current glucose level icon (322) and a glucose trend indicator (324), and wherein a third panel (370) of the plurality of panels is configured to display status information (330, 332, 334, 336) of a plurality of components of the receiver unit (104, 200); wherein the home screen (300, 390) comprises a softkey label (342),

wherein the processor is configured to detect an alarm condition in response to the current glucose level being outside predetermined threshold levels,

wherein the display (210) is configured to render the alert screen (1900) on the display (210) when the alarm condition is detected, the alert screen (1900) having information (1920) corresponding to the detected alarm condition,

wherein the display (210) is further configured to affect a further output of the glucose monitoring system corresponding to the detected alarm condition in response to user actuation of at least one of the plurality of actuators of the receiver unit (104, 200) to acknowledge the displayed alert screen (1900), wherein the user actuation of the at least one actuator comprises actuating an input button that corresponds to a softkey label on the alert screen or touching a touch sensitive area of the display that corresponds to a softkey label on the alert screen, and wherein the further output comprises returning to the home screen (300, 390) on the display (210);

wherein the processor is configured to cause the display (210) to render the plurality of display screens;

wherein the display (210) is configured to display the current glucose level icon (322) of the second panel (320, 360) of the home screen (300, 390) in a colour coded format based on whether the current glucose level is within or outside the predetermined threshold levels,

and wherein in response to the user actuating an input button that corresponds to the softkey label (342) on the home screen (300, 390) or touching a sensitive area of the display (210) that corresponds to the softkey label (342) on the home screen (300, 390), the display (210) is configured to render the timeline graph screen (400) on the display (210), wherein the timeline graph screen (400) comprises a timeline graph comprising the plurality of monitored glucose levels, wherein the timeline graph comprises a lower glucose target indicator (312) and upper glucose level target indicator (314) that can be changed by the user, wherein the timeline graph includes event data icons (318), and wherein, in response to user selection of a particular even data icon (318) by using an input button or touching the event data icon on the display (210), the display (210) is configured to display details of the selected event.

Claim 14

A method, comprising:
receiving glucose level information data from a transmitter (102), the transmitter (102)

having a sensor (101) in fluid contact with interstitial fluid;
displaying a graphical representation (305) of a plurality of glucose levels monitored over a predetermined amount of time in a first panel (302, 303) of a home screen (300, 390) on a display screen (210) of a user interface of a display device (104, 200);
simultaneously displaying a current glucose level icon (322) and a glucose trend indicator (324) in a second panel (320, 360) of the home screen (300, 390) on the display screen (210) of the display device (104, 200),
displaying a plurality of iconic status representations (330, 332, 334, 336) of a plurality of components of the display device (104, 200), wherein the plurality of iconic status representations (330, 332, 334, 336) are simultaneously displayed on a third panel (370) of the home screen (300, 390) on the display screen (210) of the display device (104, 200);
displaying a softkey label (342) on the home screen (300, 390);
detecting an alarm condition in response to the current glucose level being outside pre-determined threshold levels;
displaying an alert screen (1900) on the display screen (210) of the display device (104, 200) in response to the detected alarm condition, the alert screen (1900) having information (1920) corresponding to the detected alarm condition;
controlling further output of the display device (104, 200) based on user actuation of at least one of a plurality of actuators of the user interface of the display device (104, 200) to acknowledge the displayed alert screen (1900), wherein the user actuation of the at least one actuator comprises actuating an input button that corresponds to a softkey label on the alert screen or touching a touch sensitive area of the display that corresponds to a softkey label on the alert screen, and wherein the further output comprises returning to the home screen (300, 390) on the display (210); and
displaying the current glucose level icon (322) of the second panel (320, 360) of the home screen (300, 390) in a colour coded format based on whether the current glucose level is within or outside the predetermined threshold levels; and
in response to the user actuating an input button that corresponds to the softkey label (342) on the home screen (300, 390) or touching a touch sensitive area of the display (210) that corresponds to the softkey label (342) on the home screen (300, 390), rendering the timeline graph screen (400) on the display screen (210) of the display device (104, 200), wherein the timeline graph screen (400) comprises a timeline graph comprising the plurality of monitored glucose levels, wherein the timeline graph comprises a lower glucose target indicator (312) and an upper glucose level target indicator (314) that can be changed by the user, wherein the timeline graph includes event data icons (318), and wherein, in response to user selection of a particular event data icon (318) by using an input button or touching the event data icon on the display screen (210), the display screen (210) is configured to display details of the selected event.

The parties

4. The Appellant is established in the United States and is part of the Abbott group of companies. Appellant develops and distributes, *inter alia*, continuous glucose monitoring ("CGM") systems for diabetes patients.

5. Respondent 1 was established in 2002 and is headquartered in Changsha, China. Respondent 1 manufactures and distributes CGM systems internationally and is the largest manufacturer of glucose monitoring devices in Asia.

6. Respondent 2 is a pharmaceutical and diagnostics company established in Italy. Respondent 2 is part of the Menarini pharmaceutical group of companies and is involved in the development, manufacture and distribution of blood glucose self-testing systems for diabetes patients.

The contested embodiment

7. Appellant accuses Respondents of infringing its patent with the GlucoMen iCan and its software application, the iCan App. These products together constitute the contested embodiment and will be jointly referred to as the "GlucoMen iCan". Pictures of the GlucoMen iCan are inserted below:

8. The GlucoMen iCan is a CGM system for diabetes patients. It includes a sensor assembly ("Sensor Assembly") and an on-body device ("On-Body Device"), as well as the iCan App. The iCan App can be installed on a mobile phone, which then functions as a receiver unit for receiving sensor data collected by the Sensor Assembly and transmitted by the On-Body Device. After installing the iCan App on a mobile phone, the display of the mobile phone can render a plurality of display screens to assist the user in their diabetes management, including a home screen, an alert screen and a timeline graph screen. The home screen is configured to display, *inter alia*, the current glucose level of the user and a glucose trend indicator. The current glucose level icon is displayed in a colour coded format based on whether the current glucose level is within or outside a predetermined threshold level. An alert screen is rendered when the processor of the receiver detects that the current glucose level is outside the predetermined threshold level. After the user acknowledges the alert screen, the display returns to the home screen. The home screen comprises softkey labels that can be actuated by touching the touch sensitive area of the display of the mobile phone. In response to touching the touch screen corresponding to one of these softkey labels, the display renders a timeline graph screen which shows the monitored glucose levels and certain event data icons. These event data icons are indicative of certain events, such as eating a meal or exercising. Details of the events can be displayed by touching the event data icons using the touch screen of the mobile phone.

9. The GlucoMen iCan is also the subject of proceedings based on patent EP 4 344 633 owned by Appellant. On 30 March 2026, the Court of Appeal upheld an order of the Local Division The Hague ("LD" or "LD The Hague") (UPC_CFI_624/2025) in which a preliminary injunction and other provisional measures were issued against Respondents in relation to the GlucoMen iCan (UPC_CoA_899/2025).

10. Prior to the introduction of the GlucoMen iCan, Respondent 1 was already on the market in Europe with a product named the Sinocare iCan i3 CGM System ("Sinocare iCan i3"). According to the Respondents, the Sinocare iCan i3 is technically the same as the GlucoMen iCan and also uses the iCan App.

The procedural background and the impugned order

11. On 27 June 2025, the Appellant filed an Application for a preliminary injunction and other provisional

measures ("Application") with the LD The Hague, arguing that the GlucoMen iCan manufactured and sold by Respondents in Europe was infringing its patent.

12. In the impugned order of 22 October 2025 ("the Order"), the LD The Hague held that it had jurisdiction and internal competence to hear the case against both Respondents and that the Application had been filed in a timely manner, satisfying the requirements of urgency. The LD The Hague considered, however, that the GlucoMen iCan did not contain all features of claim 1 (and claim 14) and concluded that it was therefore more likely than not that there was no infringement of the patent. In particular, the LD The Hague was of the opinion that in the GlucoMen iCan, the event data icons were not included on the timeline graph as required by claims 1 and 14. In view of its finding on infringement, the LD did not deal with the validity- and other arguments raised by the Respondents. In the Order, the LD dismissed the Application and ordered the Appellant to bear the legal costs incurred by the Respondents and pay to the Respondents a sum of EUR 400,000 as an interim award of costs.

13. On 6 November 2025, Appellant lodged an appeal against the Order. Respondents lodged a cross-appeal with respect to the decision of the LD that the urgency requirements were fulfilled.

The requests of the parties

14. In the Statement of appeal and Statement of grounds of appeal ("Statement of Appeal"), the Appellant requests that the Court of Appeal:

    (a) set aside the Order;

    (b) grant a preliminary injunction for infringement of the patent by prohibiting the Respondents, individually and jointly, from infringing the patent in any way, with immediate effect after service of the order to be rendered in this matter, in particular by making, offering, placing on the market, and / or using, supplying or offering to supply the GlucoMen iCan (or components thereof), as well as by importing or storing the GlucoMen iCan for those purposes;

    (c) to the extent such relief has not already been obtained pursuant to the order of 17 October 2025 of the Local Division of the Hague with case number ACT_32414/2025, UPC_CFI_624/2025, order the Respondents to provide counsel for Appellant, within 4 weeks after service of the order rendered in this matter, with a written statement, substantiated with appropriate documentation drawn up and signed by an independent auditor – or any other professional that this Court deems suitable for providing such a statement – comprising, in each case, for each of the Contracting Member States in which the patent is in force:

        (i) the origin and distribution channels of GlucoMen iCan, including the full names and addresses of the legal entities that are involved in the manufacture of and trade in these systems;

        (ii) the total number of each GlucoMen iCan product that the Respondents and/or any of their affiliates still have in stock either administratively or physically as of the date of the order;

        (iii) the total number of GlucoMen iCan products that the Respondents, including any of its affiliates, have traded, sold, supplied, transferred and/or delivered to its customers and / or distributors since 27 April 2022, or since 26 July 2023, or from another date to be determined by this Court, as well as any and all copies of invoices pertaining to those acts which also shows the price obtained for these products;

        (iv) the identity including the full name(s) and address(es) of any non-consumer third person(s) involved in the production, distribution, trade and / or sale of the GlucoMen iCan and / or in the use of the GlucoMen iCan since 27 April 2022, or since 26 July

2023, or from another date to be determined by this Court;

(v) the internal cost calculated, or the purchasing costs paid, as well as the sales prices charged for the GlucoMen iCan by the Respondents, including their affiliates, since 27 April 2022, or since 26 July 2023, or from another date to be determined by this Court;

(vi) the total amount of gross and net profit which the Respondents, including their affiliates, have gained as a result of trading the GlucoMen iCan since 27 April 2022, or since 26 July 2023, or from another date to be determined by this Court, and the calculation thereof;

(d) order the Respondents to deliver up to a bailiff appointed by the Respondent, at their own expense, or alternatively orders the seizure, of any GlucoMen iCan product in stock and/or otherwise held, owned or in the direct or indirect possession of the Respondents in the Contracting Member States in which the patent is in force, within 1 week after service of the order to be rendered in this matter, and to provide counsel for Appellant with proper evidence of the full and timely compliance with this order within 10 days after the delivery up to the bailiff or seizure;

(e) order the Respondents to comply with the orders under (b) and (d) above, subject to a recurring penalty payment of up to EUR 250,000.00 or another amount as the Court of Appeal may order, to the Court of Appeal for each violation of, or non-compliance with, the order(s), plus up to EUR 100,000.00 for each day, or part of a day counting as an entire day, that the violation or non-compliance continues, or another amount as determined by this Court in the proper administration of justice;

(f) append an order for the enforcement to its decision, while declaring that the order is immediately enforceable;

(g) order the Respondents to jointly and severally bear reasonable and proportionate legal costs and other expenses incurred by Appellant of the entire proceedings at first instance and on appeal and orders, insofar such costs are to be determined in separate proceedings for the determination of such costs, that the Respondents pay to Appellant by means of an interim award of costs of the sum of EUR 11,000.00 or another amount as the Court of Appeal may order;

(h) order the Respondents, jointly and severally, to repay to Appellant all costs that were paid by Appellant to the Respondents in execution of the Order of the Court of First Instance; and

(i) in the event the Court of Appeal upholds the Order of the Court of First Instance in relation to the infringement finding, Appellant request that the interim award of costs that Appellant was ordered to pay to the Respondents be limited to EUR 11,000.00 per instance and that the costs are to be determined in separate proceedings for the determination of such costs.

15. The Appellant further requests that the amount of security, if any, be fixed separately for each enforceable part of the Court of Appeal's decision.

16. The Respondents submits the following requests to the Court of Appeal:

Primarily

- grant the Respondents' cross-appeal to overturn the Order and dismiss Appellant's Application for provisional measures for not having been filed within a reasonable delay.

In the alternative

- dismiss Appellant's appeal against the Order in its entirety, and consequently,
- dismiss Appellant's Application for provisional measures on the ground that the patent is more likely than not invalid and not infringed.

In the further alternative

- dismiss the preliminary injunction and/or corrective measures for recall claimed against the Respondents for being disproportionate.
- dismiss the request for communication of information made by Appellant as inadmissible, at least with respect to the Respondents' sales volumes, selling price, internal costs and purchasing costs, and gross/net profits;

In the ultimate alternative

- order that any preliminary injunction and/or corrective measure against the Respondents be strictly limited to the use of the iCan CGM App with GlucoMen iCan in the reimbursement market of the Contracting Member States where the patent is in force.
- dismiss Appellant's claim to have the recalled products placed under seal under bailiff supervision.
- order that any preliminary injunction and/or corrective measure against the Respondents will come into effect at least one month after service of the decision.
- order that penalty payments associated with the preliminary injunction shall only enter into force one month after the service of the decision and shall be mitigated as follows:
    - EUR 10,000.00 for each violation and EUR 1,000.00 for each day the violation continues, or
    - EUR 100.00 for each product found in violation.
- order that the data and information to be communicated in the context of the provision of information under Art. 67(1) UPCA be qualified as trade secrets which is to be treated strictly confidential and may not be used or disclosed outside of the present legal dispute, even after its conclusion, and that Appellant may only disclose the information to those representatives and to an independent economic expert designated by the parties;
- order Appellant to provide a security bond of EUR 400,000.00 for enforcement of the decision.

In any event

- confirm the Order in that it ordered Appellant to pay an interim award of legal costs of EUR 400.000,00 to the Respondents.
- order Appellant to bear the legal costs and expenses incurred by the Respondents in the present appeal proceedings.
- order Appellant to pay to the Respondents an amount of EUR 400,000.00 as an interim award for legal costs incurred in the present appeal proceedings.
- order Appellant to comply with the order under XIV above [previous bullet, CoA] subject to a recurring penalty payment of EUR 10,000.00 per day of delay as from the service of the decision.

SUMMARY OF THE PARTIES' SUBMISSIONS

17. Appellant argues that the LD The Hague was incorrect to conclude that it is more likely than not that the patent is not infringed. According to the Appellant, the LD interpreted the claim too narrowly by requiring that the event data icons must be displayed "*on or near the graph line of the timeline graph, or in any case on the graph*", and that, as a consequence, a time line graph screen wherein the timeline graph is displayed in one panel/section of the screen and the event data icons are displayed in a different panel/section of the screen, does not fall within the scope of protection of claim 1. According to the Appellant, this claim feature should be interpreted to merely require that the event data icons are placed at locations on the graph according to the time at which the event took place, and not necessarily on or near the graph line. The Appellant further argues that the asserted grounds of invalidity (added matter and lack of inventive step) are unfounded and that the LD was correct to

decide that the requirements of urgency are met. In addition, the Appellant argues that the requested provisional measures are necessary to protect its interests prior to a decision on the merits and that these interests outweigh the interests of the Respondents.

18. The Respondents follow the LD's interpretation of claim 1 and argue that the LD was correct to conclude that the GlucoMen iCan is not covered by claim 1. In addition, the Respondents argue that the patent is more likely than not invalid, because claims 1 and 14 contain added matter and lack an inventive step. According to the Respondents, the LD was incorrect to conclude that the matter is urgent. The Respondents argue that the Appellant did not act for 1,5 years against the Sinocare iCan i3 although this product is technically the same as the GlucoMen iCan and also uses the iCan App. Also after the announcement of the introduction of the GlucoMen iCan in December 2024, the Appellant did not act with sufficient diligence against the introduction of the GlucoMen iCan. According to the Respondents, even if it would be assumed that the relevant date for urgency is 24 April 2025, when the user guide for the GlucoMen iCan was published on the website and the products became publicly available in different European countries, the Appellant waited too long (approximately two months) before starting these PI-proceedings. In addition, the Respondents argue that a preliminary injunction would not be necessary and, in any case, the Respondents' interests to continue the sale of the GlucoMen iCan outweigh the interests of the Appellant.

GROUNDS FOR THE ORDER

19. Appellant's appeal against the Order of the LD The Hague is admissible and founded. Respondents' cross-appeal is inadmissible.

I. Jurisdiction

20. In the Order, the LD The Hague accepted jurisdiction and competence to hear the case for the UPC territory against Respondent 1 (established in China) and Respondent 2 (established in Italy). With respect to both Respondents, the LD based its international jurisdiction on Art. 71b(1)/(2) and Art. 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (recast) as amended by Regulation (EU) No 542/2014 of the European Parliament and Council of 15 May 2014, and its internal competence on Art. 33(1)(a) of the UPCA. Neither party appealed this part of the Order. The Court of Appeal agrees with the LD The Hague that the UPC has international jurisdiction and competence for the UPC territory with respect to both Respondents.

II. The patent at issue

21. Paragraphs [0001] – [0005] of the description[1] set out the background of the invention. It is explained that uncontrolled fluctuations in blood glucose levels in people suffering from diabetes may cause long-term, serious complications. This has provided the impetus to develop diabetes management systems and treatment plans, including multiple daily testing of blood glucose levels by applying blood samples to test strips. More recently, continuous glucose monitoring systems have been developed as part of diabetes management. These systems have the capability to continuously monitor a user's blood glucose fluctuations over a period of time and display the results to a user (paragraph [0003]).

22. According to paragraph [0004] of the patent it would be desirable to have a display and/or a user interface capable of "*robust, comprehensive information presentation, analysis, processing, user manipulation and/or usability features including, for example, programmable alarms and alerts, comprehensive visual, audible and/or vibratory output for assisting in diabetes management and improving glycemic control.*"

[1] The paragraph numbers refer to the description of the B2-version of the patent.

23. Against this background, claim 1 of the patent protects a glucose monitoring system and claim 14 protects a method of glucose monitoring. The parties and the LD The Hague have referred to the separate features of claims 1 and 14 as follows, to which the Court of Appeal agrees:

Claim 1

Feature 1.1	a glucose monitoring system, comprising:
Feature 1.2	a glucose sensor (101) configured to be positioned at least in part in contact with interstitial fluid in a body of a user;
Feature 1.3	a transmitter unit (102) configured to process data indicative of a plurality of monitored glucose levels from the glucose sensor (101); and
Feature 1.4	a receiver unit (104, 200) comprising a processor, and a user interface having a display (210) and a plurality of actuators,
Feature 1.5	wherein the receiver unit (104, 200) is configured to receive the processed data from the transmitter unit (102),
Feature 1.6	wherein the display (210) is configured to render a plurality of display screens, including at least a home screen (300, 390), an alert screen (1900, 2000, 2100), and a timeline graph screen (400),
Feature 1.7	wherein the home screen (300, 390) is divided into a plurality of simultaneously displayed panels,
Feature 1.7(a)	wherein a first panel (302, 303) of the plurality of panels is configured to display the plurality of monitored glucose levels,
Feature 1.7(b)	wherein a second panel (320, 360) of the plurality of panels is configured to simultaneously display a current glucose level icon (322) and a glucose trend indicator (324),
Feature 1.7(c)	and wherein a third panel (370) of the plurality of panels is configured to display status information (330, 332, 334, 336) of a plurality of components of the receiver unit (104, 200);
Feature 1.7(d)	wherein the home screen (300, 390) comprises a softkey label (342),
Feature 1.8	wherein the processor is configured to detect an alarm condition in response to the current glucose level being outside predetermined threshold levels,
Feature 1.9	wherein the display (210) is configured to render the alert screen (1900) on the display (210) when the alarm condition is detected, the alert screen (1900) having information (1920) corresponding to the detected alarm condition,
Feature 1.10	wherein the display (210) is further configured to affect a further output of the glucose monitoring system corresponding to the detected alarm condition in response to user actuation of at least one of the plurality of actuators of the receiver unit (104, 200) to acknowledge the displayed alert screen (1900), wherein the user actuation of the at least one actuator comprises actuating an input button that corresponds to a softkey label on the alert screen or touching a touch sensitive area of the display that corresponds to a softkey label on the alert screen, and wherein the further output comprises returning to the home screen (300, 390) on the display (210);

Feature 1.11	wherein the processor is configured to cause the display (210) to render the plurality of display screens;
Feature 1.12	wherein the display (210) is configured to display the current glucose level icon (322) of the second panel (320, 360) of the home screen (300, 390) in a colour coded format based on whether the current glucose level is within or outside the predetermined threshold levels,
Feature 1.13	and wherein in response to the user actuating an input button that corresponds to the softkey label (342) on the home screen (300, 390) or touching a sensitive area of the display (210) that corresponds to the softkey label (342) on the home screen (300, 390), the display (210) is configured to render the timeline graph screen (400) on the display (210),
Feature 1.13(a)	wherein the timeline graph screen (400) comprises a timeline graph comprising the plurality of monitored glucose levels,
Feature 1.13(b)	wherein the timeline graph comprises a lower glucose target indicator (312) and upper glucose level target indicator (314) that can be changed by the user,
Feature 1.13(c)	wherein the timeline graph includes event data icons (318),
Feature 1.13(d)	and wherein, in response to user selection of a particular event data icon (318) by using an input button or touching the event data icon on the display (210), the display (210) is configured to display details of the selected event.

Claim 14

Feature 14.1	A method, comprising receiving glucose level information data from a transmitter (102), the transmitter (102) having a sensor (101) in fluid contact with interstitial fluid;
Feature 14.2(a)	displaying a graphical representation (305) of a plurality of glucose levels monitored over a predetermined amount of time in a first panel (302, 303) of a home screen (300, 390) on a display screen (210) of a user interface of a display device (104, 200);
Feature 14.2(b)	simultaneously displaying a current glucose level icon (322) and a glucose trend indicator (324) in a second panel (320, 360) of the home screen (300, 390) on the display screen (210) of the display device (104, 200),
Feature 14.2(c)	displaying a plurality of iconic status representations (330, 332, 334, 336) of a plurality of components of the display device (104, 200), wherein the plurality of iconic status representations (330, 332, 334, 336) are simultaneously displayed on a third panel (370) of the home screen (300, 390) on the display screen (210) of the display device (104, 200);
Feature 14.3	displaying a softkey label (342) on the home screen (300, 390);
Feature 14.4	detecting an alarm condition in response to the current glucose level being outside pre-determined threshold levels;
Feature 14.5	displaying an alert screen (1900) on the display screen (210) of the display device (104, 200) in response to the detected alarm condition, the alert screen (1900) having information (1920) corresponding to the detected alarm condition;

Feature 14.6 controlling further output of the display device (104, 200) based on user actuation of at least one of a plurality of actuators of the user interface of the display device (104, 200) to acknowledge the displayed alert screen (1900),

Feature 14.7 wherein the user actuation of the at least one actuator comprises actuating an input button that corresponds to a softkey label on the alert screen or touching a touch sensitive area of the display that corresponds to a softkey label on the alert screen,

Feature 14.8 and wherein the further output comprises returning to the home screen (300, 390) on the display (210); and

Feature 14.9 displaying the current glucose level icon (322) of the second panel (320, 360) of the home screen (300, 390) in a colour coded format based on whether the current glucose level is within or outside the predetermined threshold levels; and

Feature 14.10 in response to the user actuating an input button that corresponds to the softkey label (342) on the home screen (300,390) or touching a touch sensitive area of the display (210) that corresponds to the softkey label (342) on the home screen (300, 390), rendering the timeline graph screen (400) on the display screen (210) of the display device (104, 200),

Feature 14.10(a) wherein the timeline graph screen (400) comprises a timeline graph comprising the plurality of monitored glucose levels,

Feature 14.10(b) wherein the timeline graph comprises a lower glucose target indicator (312) and an upper glucose level target indicator (314) that can be changed by the user,

Feature 14.10(c) wherein the timeline graph includes event data icons (318),

Feature 14.10(d) and wherein, in response to user selection of a particular event data icon (318) by using an input button or touching the event data icon on the display screen (210), the display screen (210) is configured to display details of the selected event.

24. Claim 1 of the patent provides a glucose monitoring system comprising a glucose sensor (feature 1.2), a transmitter unit (feature 1.3) and a receiver unit (feature 1.4). The receiver unit comprises a user interface having a display that is configured to render a plurality of display screens, including at least a home screen, an alert screen and a timeline graph screen (feature 1.6).

25. The **home screen** according to claim 1 is divided into a plurality of simultaneously displayed panels (feature 1.7). A first panel of the home screen displays the monitored glucose levels (feature 1.7(a)), a second panel displays a current glucose level icon and a glucose trend indicator (feature 1.7(b)), and a third panel displays status information of a plurality of components of the receiver unit (feature 1.7(c)), such as the availability of a wireless connection or the battery life of the receiver unit (see e.g. paragraph [0085]). In addition, the home screen comprises at least one softkey label (feature 1.7(d)). The description of the patent explains that a softkey label determines the action that occurs when a corresponding input button is actuated by the user or when a touch sensitive area of the display corresponding to the softkey label is touched (paragraph [0080]).

26. Figure 3A of the patent shows an example of a home screen:

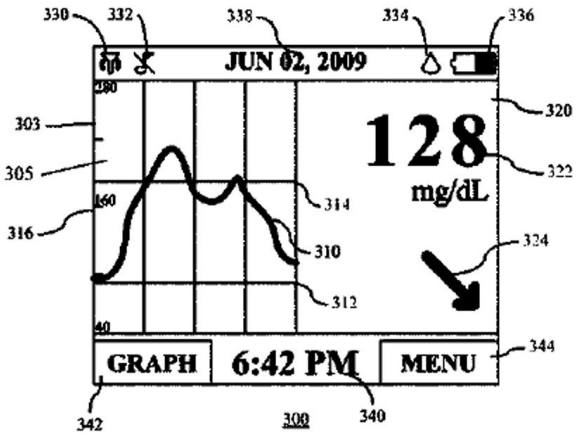


FIG. 3A

27. In this example, the first panel of the home screen is designated with reference number 303, the second panel is designated with reference number 320 and the third panel is designated with reference number 338. The home screen of this example also contains two softkey labels, i.e. softkey label 342 ("Graph") and softkey label 344 ("Menu").

28. The display of the receiver unit is further configured to render an **alert screen** if a glucose level is detected that is outside predetermined blood glucose thresholds (feature 1.9). The user can acknowledge the alarm condition by actuating a softkey label on the alert screen. The system then returns to the home screen (feature 1.10). The current glucose level icon in the second panel of the home screen is displayed in a colour coded format based on whether it is within or outside the thresholds (feature 1.12).

29. Figure 19 of the patent shows an example of an alert screen:

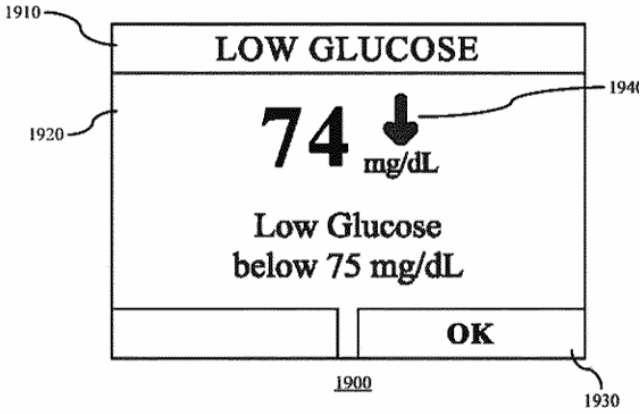


FIG. 19

30. After actuating an input button or touching a touch sensitive area of the display corresponding to a softkey label on the home screen, the display of the receiver unit renders a **timeline graph screen** (feature 1.13). The timeline graph screen comprises a timeline graph, which includes the monitored glucose levels (feature 1.13(a)), upper and lower glucose levels target indicators (feature 1.13(b)) and event data icons (feature 1.13(c)). The user can select an event data icon to see details of the selected event (feature 1.13(d)).

31. Figure 4A of the patent shows an example of a timeline graph screen:

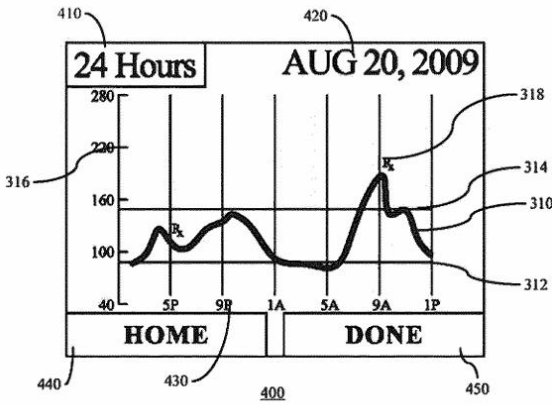


FIG. 4A

32. In this example, the monitored glucose levels are depicted by graph line 310 and the event data icons 318 are displayed close to the graph line. In addition, the timeline graph contains a lower glucose target indicator 312 and an upper glucose target indicator 314. Besides the timeline graph, the timeline graph screen includes two softkey labels (“Home” and “Done”).

33. Claim 1 thus provides a glucose monitoring system which assists the user in diabetes management and glycemic control in line with the object of the invention mentioned in paragraph [0004] of the patent. Claim 14 corresponds to claim 1 and protects a method of glucose monitoring.

III. Skilled person

34. The LD The Hague defined the skilled person as a software engineer or user interface designer, especially for medical devices, preferably CGM devices, with common general knowledge in user interfaces for medical devices, and more generally in the field of display of information. This definition was provided by the Respondents and the Appellant broadly agreed with this definition. The Court of Appeal also agrees with this definition and will apply it in this order.

IV. Claim construction

35. The principles applicable to claim construction have been set out by this Court in its final order in UPC_CoA_335/2023 (26 February 2024, NanoString v 10x Genomics, as rectified; see also CoA UPC_CoA_1/2024, 13 May 2024, VusionGroup v Hanshow; UPC_CoA_768/2024, 30 April 2025, Insulet v. EOFlow). A patent claim is not only the starting point but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. A patent claim must always be interpreted from the perspective of a person skilled in the art. The skilled person interprets the features of a claim always in the light of the claims as a whole (UPC_CoA_1/2024, 13 May 2024, VusionGroup v Hanshow; UPC_CoA_768/2024, 30 April 2025, Insulet v EOFlow, UPC_CoA_646/2024, 25 November 2025, Meril v Edwards). These principles for interpreting a patent claim apply both to the question of patent infringement and to the question of validity (NanoString v 10x Genomics, u.a., see also as to validity: Enlarged Board of Appeal, 18 June 2025, G1/2024).

36. There is dispute between the parties on the interpretation of a number of features of claims 1 and 14. These features are discussed below. The Court of Appeal will focus on the features of claim 1. The same applies *mutatis mutandis* to the corresponding features of claim 14.

Feature 1.4

37. According to feature 1.4, one of the components of the glucose monitoring system is a receiver unit.

The receiver unit is configured to receive the processed data from a transmitter unit (feature 1.5). Feature 1.4 specifies that the receiver unit has a processor and a user interface having a display and a plurality of actuators. The actuator of the receiver unit may be an input button or a touch sensitive "area of the display" of the receiver unit (features 1.10 and 1.13). This combination of elements in the claim indicates to the skilled person that the "receiver unit" is a hardware device.

38. This is confirmed in the description. Paragraphs [0016] and [0020] describe the receiver unit with reference to Figures 1 and 2A-C. These figures show the receiver unit as a hardware device with a physical display 210 and input buttons 220 (cf. paragraph [0022]):

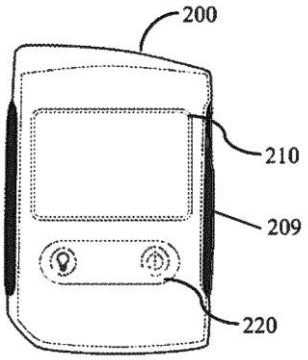


FIG. 2A

39. Paragraph [0026] of the description lists a number of exemplary physical displays of the receiver unit, including the touch sensitive display referred to in features 1.10 and 1.13 of claim 1.

40. Although a mobile phone is not mentioned in the description in relation to the primary receiver unit 104, a secondary receiver unit 106 can be a mobile phone (paragraph [0017]). According to the description, both units can be configured with the same or similar technology. Thus, the skilled person recognizes that a mobile phone can also fulfil the functions of a (primary) receiver unit and, hence, as a receiver unit according to feature 1.4.

41. The term "actuator" in feature 1.4 is not defined in the claim or in the description. From the claim (feature 1.4 in conjunction with features 1.10 and 1.13) and the exemplary embodiments in the description, it will be understood by the skilled person that an "actuator" is an element of the receiving unit that can be used to invoke a certain function of the receiver unit, for example a function corresponding to a softkey label. Paragraph [0022] mentions an input button as an example of an actuator. Other examples are a jog wheel 230 and a secondary button 240 (paragraph [0022]). Although not specifically stated in the description, a "*touch sensitive area of the display*" will also be understood as an actuator as meant in feature 1.4. This follows from features 1.10 and 1.13 and paragraph [0080] of the description.

Feature 1.7

42. According to feature 1.7, the home screen is divided into a plurality of simultaneously displayed panels. The other two screens mentioned in feature 1.6 (het alert screen and the timeline graph screen) are not described in the claim as having panels. Features 1.7(a)-1.7(c) specify what type of information must be displayed in the first, second and third panels of the home screen.

43. In line with claim 1, the description of the patent refers to "panels" only in relation to the home screen (see, for example, paragraphs [0024] and [0048]). Paragraph [0048] states in this respect: "*Referring to FIG. 3A, the information mode home screen 300 includes a plurality of* ***panels*** *or* ***sections***. (..) *Thus, what is displayed in one panel may not necessarily affect what is displayed in a second panel. Furthermore, each panel or section may display different types of data to a user and the data in each panel is dynamically updated*". A skilled person will therefore understand "panels"

to be different, independent sections of the home screen that display different types of information.

Feature 1.7(c)

44. The third panel of feature 1.7(c) is "*configured to display*" status information of a plurality of components of the receiver unit. The claim does not contain any further limitations of the third panel or the type of data to be displayed in this panel, neither in terms of content, nor in terms of origin or manner of display. The Court of Appeal therefore disagrees with the Respondents that feature 1.7(c) excludes the use of information in the third panel provided or overlaid by the receiver unit itself, such as data in relation to the receiver's battery life. In case the third panel on the home screen is "*configured to display*" such information, it is covered by feature 1.7(c).

45. This is in line with the description. The third panel is mentioned in paragraphs [0048], [0074], [0082] and [0085]. These paragraphs explain that the third panel is present on the home screen and may be configured to display system information icons, such as a wireless connection icon, an audio/vibratory settings icon, a calibration status icon, and a battery icon. An example of a panel that displays this information is shown in Figure 3A above. The skilled person recognizes that the status information displayed in this panel is separate from the information in the other panels that show the monitored glucose levels (feature 1.7(a)) and the glucose level icon and trend indicator (feature 1.7 (b)).

Feature 1.10

46. Feature 1.10 specifies the user-machine interactions when an alert screen is shown following the detection of an alarm condition (feature 1.9). In particular, feature 1.10 specifies that the display of the receiver unit returns to the home screen following acknowledgement of the alert screen by the user. According to feature 1.10, there are two possible modes of user acknowledgement of the alert screen: actuating an input button that corresponds to a softkey label on the alert screen or touching a touch sensitive area of the display that corresponds to a softkey label on the alert screen. From this distinction and the overall wording of the claim, the skilled person will understand the input button of the first mode of user acknowledgement to be a physical element of the receiver unit.

47. This is in line with the description. Paragraph [0022] describes the interface of the receiver unit with reference to Figure 2A, depicted above. According to this description, the interface includes a display 210 and a plurality of input buttons 220. These are physical elements of the receiver unit. The description also uses the term "softkey button" for a physical input button corresponding to a softkey label. Reference is made, for example, to paragraph [0027]: "*(..) each input button 220 may also be used as a **softkey button** such that actuation of the input buttons 220 invoke functions described by text of a **softkey button label** shown on the display 201."* Paragraph [0237] describes the actuation of a softkey button corresponding to a softkey label for acknowledging an alert screen resulting in returning to the home screen. This corresponds to the first mode of acknowledging the alert screen specified in feature 1.10 using a physical input button.

Features 1.13.-1.13(c)

48. Feature group 1.13 (features 1.13 and 1.13(a)-1.13(c)) specifies the rendering and display of the timeline graph screen.

49. According to feature 1.13, "the display" is configured to render a timeline graph screen in response to actuating an input button or touching a touch sensitive area of the display corresponding to the softkey label on the home screen (feature 1.7(d)). The display referred to in feature 1.13 is the display of the receiver unit mentioned in feature 1.4. This is the only display mentioned in the claim and the word "the" (display) in feature 1.13 confirms that reference is made to the earlier mentioned display of feature 1.4. The Court of Appeal therefore disagrees with the interpretation of the Respondents that the display of feature 1.13 could also be a display of another device, such as an external computer.

50. According to feature 1.13(a), the timeline graph screen comprises a timeline graph comprising "the" plurality of monitored glucose levels. This is the plurality of monitored glucose levels referred to in feature 1.3, i.e. the monitored glucose levels that are obtained by the glucose sensor of feature 1.2 and transmitted by the transmitter unit of feature 1.3 to the receiving unit of feature 1.4. This same plurality of monitored glucose levels is included in the first panel of the home screen according to feature 1.7(a). The Court of Appeal therefore disagrees with the interpretation of the Respondents that there would be a difference between the plurality of monitored glucose levels on the home screen and those on the timeline graph screen and that "*the home screen concerns real time glucose information whereas the timeline graph screen and the event data icons concern past glucose information*." The claim does not make such a distinction.

51. In addition to the plurality of monitored glucose levels (feature 1.13(a)) and the glucose target indicators (feature 1.13(b)), the timeline graph also includes event data icons (feature 1.13.(c)). Event data icons represent a certain event, such as meal times or exercise periods (e.g. paragraphs [0084] and [0089]). When reading features 1.13(a) and 1.13(c) together, the skilled person will understand that the monitored glucose levels and the event data icons are correlated to the same **timeline** of the "timeline" graph. This is in line with the ordinary meaning of the term "graph" as a diagram that shows the relation between two or more quantities (cf. also Statement of response and cross-appeal ("Statement of response"), paragraph 155). The timeline graph of feature group 1.13 shows at which times the monitored glucose levels and the events corresponding to the event data icons occurred.

52. The description uses the term graph in the same ordinary, broad meaning. Reference is made, for example, to paragraph [0052]: "*Although graph 305 is depicted as a line graph, it is contemplated various other types of graphs may be used including bar graphs, pie charts etc. Graph 305 includes a graph line 310 that represents continuous glucose readings taken over a time t.*" Moreover, as stated in paragraph [0052], the graph 305 can also include a range of numbers on the x-axis and the y-axis. Although paragraph [0052] discusses the timeline graph on the home screen, it is clear that the same applies to the timeline graph on the timeline graph screen of feature group 1.13.

53. According to feature 1.13, the timeline graph is included on a timeline graph **screen**. The word "comprises" in feature 1.13(a) implies that the timeline graph screen may contain more elements than just the timeline graph. This is shown, for example, in Figure 4A depicted above, which provides an example of a timeline graph screen (paragraph [0086]). This screen contains two softkey labels in addition to the timeline graph.

54. In the example of Figure 4A, the timeline graph uses a graph line 310 to depict the monitored glucose levels. In this example of the timeline graph, event data icons 318 are located close to the graph line 310 within the x-axis and y-axis of the graph. Claim 1 does not contain these limitations and also according to the description, the timeline graph is not limited to the specific example of Figure 4A. Figure 4E, for example, does not include a graph line and shows the custom event icons at some distance from the glucose reading icons. Moreover, paragraph [0084] explains in general terms that "*the graph 305 may also include event data icons 318 that represent various events of the user **during the time period the graph represents***", without specifying the location of the event data icons in relation to the monitored glucose levels. Paragraph [0089] similarly explains that the event data icons "*are placed at locations on the graph **according to the time at which the event took place***", again without requiring a certain location of the event data icons in the graph in relation to the monitored glucose levels (other than their mutual position in relation to the timeline of the timeline graph).

55. In short, according to the Court of Appeal, the event data icons can be placed anywhere on the graph, as long as the time at which the event occurred is identified on the graph. Because the glucose levels are included on the same timeline graph, the user is assisted to identify the relation between the event and the blood glucose levels (cf. paragraphs [0090] and [0056]). To achieve this, it is necessary that the relationship between the monitored glucose levels and the event is recognizable. How this is implemented (by using a graph line and/or by locating the blood glucose levels in the same area

of the graph as the glucose levels) is left open in the claim.

56. The Court of Appeal therefore disagrees with the interpretation of the LD The Hague and the Respondents that the monitored glucose levels and the event data icons must always be included in the same "panel" or section of the timeline graph screen. Leaving aside that the use of separate panels is only required on the home screen (feature 1.7) and not on the timeline graph screen (feature 1.13), claim 1 only requires that the monitored glucose levels and the event data icons are included in the same timeline graph. The claim does not require both to be in the same area of the graph or within a certain range of one another.

57. The distinction between the timeline graph **screen** and the timeline graph, referred to by the LD and the Respondents, does not alter this. As stated above, the timeline graph screen may contain more elements than only the timeline graph, but this does not mean that the event data icons must be located at a position near or in the same area as the monitored glucose levels. There is no basis in the claim or the description for restricting the event data icons to being located on or near the graph line nor between the x-axis and the y-axis of the graph. Also when the event data icons are displayed below the x-axis, they can be part of the timeline graph of feature group 1.13, as long as a time correlation can be established.

V. Infringement

58. The Court of Appeal considers it more likely than not that the contested embodiment infringes claim 1 and claim 14 of the patent.

Infringement of claim 1

59. The Respondents contest the presence of features 1.4, 1.7(c), 1.10 and 1.13(c) of claim 1.

60. Feature 1.4 would not be present because the Respondents do not offer or supply receiver units, i.e. mobile phones on which the iCan App can be installed. Feature 1.7(c) would not be present because the status information on the home screen would not be displayed by the iCan App but by the mobile phone itself. As a result, the home screen generated by the iCan App would not contain a third panel. Feature 1.10 would not be present because the softkey label on the alert screen of the iCan App can only be actuated by touching a touch sensitive part of the touch screen. This mode of user acknowledgement would not be disclosed in the original applications. Finally, feature 1.13(c) would not be present because the "Trend Graph" of the iCan App would not include event data icons.

Feature 1.4

61. As discussed above, the receiver unit of feature 1.4 is a hardware device. According to the Appellant, the mobile phones on which the iCan App is installed should be considered as receiver units according to feature 1.4. It is undisputed between the parties that Respondents do not sell or offer to sell mobile phones to third parties. This means that the Respondents do not (offer to) sell one of the components of the glucose monitoring system of claim 1, i.e. the receiver unit of feature 1.4. As a result, the Respondents do not directly infringe claim 1 of the patent (Art. 25 UPCA). However, as will be discussed below, Respondents indirectly infringe claims 1 and 14 of the patent by offering and supplying the GlucoMen iCan in the UPC territory (Art. 26 UPCA).

Feature 1.7(c)

62. As noted above, the Court of Appeal disagrees with the Respondents that feature 1.7(c) excludes the use of information in a third panel provided or overlaid by the receiver unit itself, such as data in relation to the receiver's battery life. In case the home screen includes a third panel that is "*configured to display*" such information, it is covered by feature 1.7(c).

63. This is the case when using the iCan App: the home screen that is rendered on the user's mobile

phone after installing the iCan App includes a third panel that displays status information of components of the mobile phone, i.e. wireless connectivity and battery life. How this third panel or the displayed status information is generated is not relevant for the infringement of claim 1.

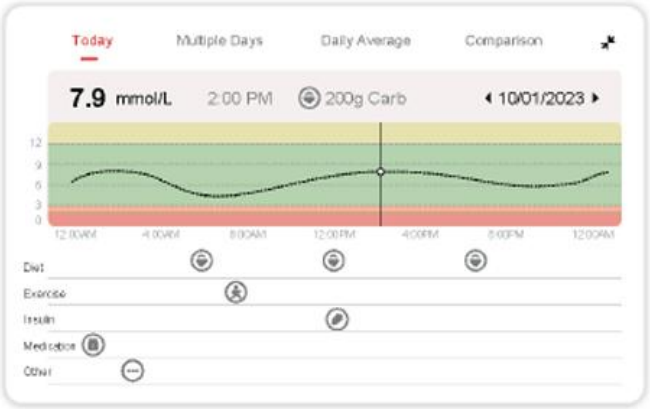
Feature 1.10

64. Respondents do not contest that a user can acknowledge the alert screen generated by the iCan App, by touching a touch sensitive area of the display corresponding to a softkey label on the alert screen. This is one of the two possible modes of user acknowledgement specified in feature 1.10. Respondents' argument that the inclusion of this mode of user acknowledgement in feature 1.10 constitutes added matter is irrelevant for the question of infringement. As discussed below, this argument is furthermore unfounded.

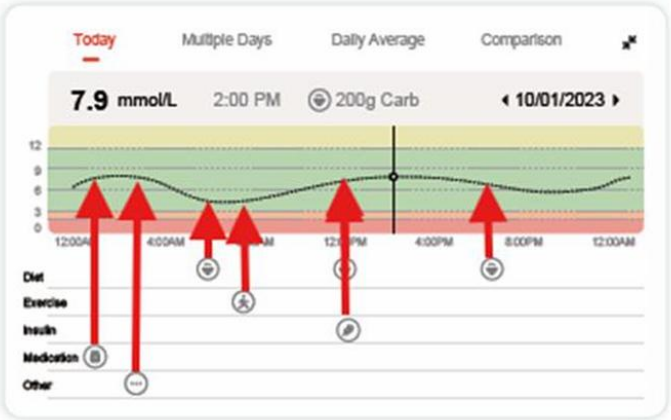
Feature 1.13(c)

65. As the Appellant has shown in the Application, by touching a touch sensitive area of the display corresponding to a softkey label on the home screen, the display of an iCan enabled mobile phone renders a screen containing a timeline graph (feature 1.13). This is not disputed by the Respondents.

66. In the user guide of the GlucoMen iCan (Exhibit C1, page 41), the timeline graph is referred to as the "Trend Graph" and is illustrated as follows:



67. As can be seen, the Trend Graph sets out the time on the x-axis. Above the x-axis, the monitored glucose levels are included in the graph. Below the x-axis, a number of event data icons are included in the graph ("Diet", "Exercise", "Insulin", etc.). The event data icons are placed at locations on the graph according to the time at which the event took place. These icons are thus correlated to the same time axis as the monitored glucose levels. Because of this correlation, the user can identify the glucose level at the time of occurrence of a certain event. Appellant illustrated this in the Statement of appeal by including red arrows on the Trend Graph. The Trend Graph with these red arrows is depicted below:



68. According to the Court of Appeal, the Trend Graph of the GlucoMen iCan thus includes event data icons within the meaning of feature 1.13(c). As explained above, according to this feature, the event data icons must be placed on the graph such that a correlation with the time axis can be established. Also when the event data icons are displayed below the x-axis, they are part of the timeline graph of feature group 1.13 as long as a time correlation can be established. That is the case here. Contrary to Respondents' assertions, all requirements of feature 1.13(c) are thus fulfilled.

Infringement of claim 14

69. Appellants do not contest infringement of claim 14 based on any other arguments than those for claim 1. In view of the above, the Court of Appeal concludes that it is also more likely than not that claim 14 is infringed with the GlucoMen iCan.

VI. Validity

70. The Court of Appeal considers it more likely than not that claims 1 and 14 are valid.

Added matter

71. Respondents argue that Art. 76(1) and Art. 123(2) of the European Patent Convention ("EPC") are violated, because the original applications would not disclose the second mode of user acknowledgement of the alert screen according to feature 1.10, i.e. "*touching a touch sensitive area of the display that corresponds to a softkey label*".

72. According to the Respondents, basis for feature 1.10 can only be found in Figure 24A and paragraph [0275] of the PCT application. Paragraph [0275] limits the user acknowledgement of the alert screen to actuating a "softkey button". According to the Respondents, the "softkey button" mentioned in paragraph [0275] is limited to a physical input button of the receiver unit. Paragraph [0275] would therefore only disclose the first mode of user acknowledgement of the alert screen in feature 1.10 and not the user acknowledgement by touching a touch sensitive area of the display. According to the Respondents, the reason for this limitation is that interactions with the alert screen are "critical", and therefore, inadvertent actuation of a touch screen should be avoided. Non-critical interactions can be effectuated with any actuator, including touching a touch sensitive area of the display.

73. Appellant disagrees and refers to the decision of the OD (section 4.1), in which the OD confirmed that feature 1.10 finds basis in the original applications, in particular in paragraphs [0275] and [0112] of the PCT application. The Appellant further refers to paragraphs [0048], [0056] and [0182] of the PCT application. According to the Appellant, the distinction between critical and non-critical applications cannot be found in the PCT application.

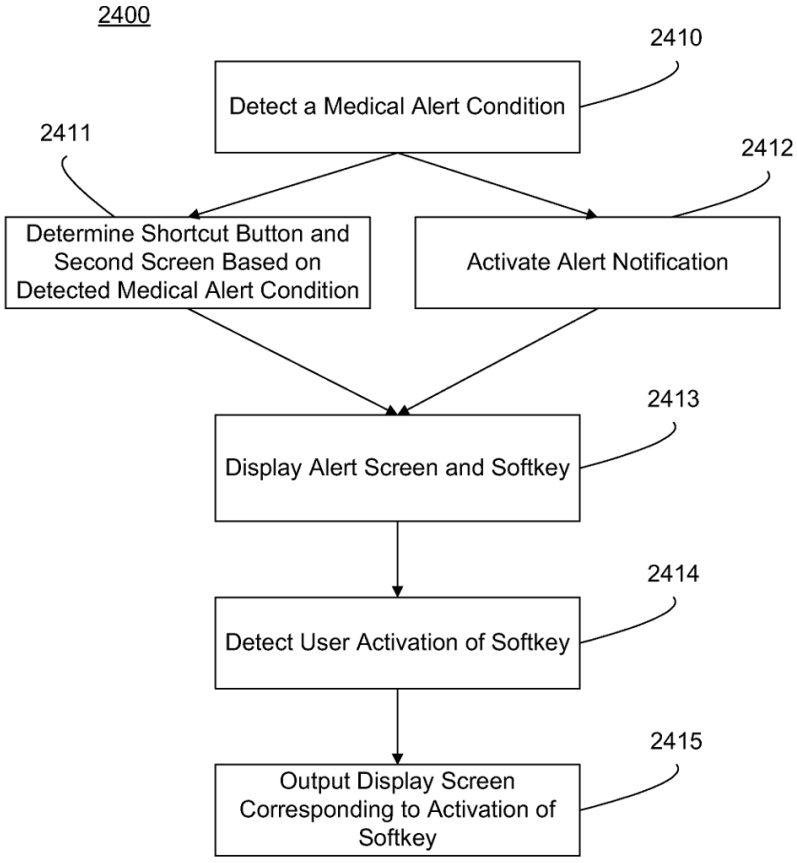
74. The Court of Appeal considers the added matter argument of the Respondents to be unfounded.

75. In the analysis below, the Court of Appeal will refer to the PCT application from which the parent application was derived. The subsequent divisional applications contain the same description and the same drawings.

76. As this Court previously decided, there is added matter if the claim as granted contains subject matter that extends beyond the content of the application as filed. In order to ascertain whether there is added matter, the Court must thus first ascertain what the skilled person would derive directly and unambiguously using his common general knowledge and seen objectively and relative to the date of filing, from the whole of the application as filed, whereby implicitly disclosed subject-matter, i.e. matter that is a clear and unambiguous consequence of what is explicitly mentioned, shall also be considered as part of its content. Where, as here, the patent is a divisional application, this requirement applies to each earlier application (UPC_CoA_382/2024, 14 February 2025, Abbott v Sibio and UPC_CoA_646/2024, 25 November 2025, Meril v Edwards).

77. The Court of Appeal agrees with the parties that Figure 24A and paragraph [0275] of the PCT application disclose most of the elements of feature 1.10. Paragraph [0275] and Figure 24A are inserted below:

> "[0275] *FIG. 24A illustrates a flow chart 2400 for outputting display screens based on a detected alert condition according to embodiments of the present disclosure. As shown in FIG. 24A, a processor of an analyte monitoring device, such as analyte monitoring device 200 (FIG. 2A) first detects a medical alert condition (2410). The detected medical alert condition may correspond to a high urgency alert such as described above. The processor of the analyte monitoring device 200 may activate an alert notification, such as, for example, output an alarm tone and an alert display screen, and simultaneously determine a softkey button label for a softkey button that will output a display screen corresponding to alert condition upon user actuation of the softkey button (2411 and 2412). When the user actives the analyte monitoring device 200, the alert screen associated with the alert condition is output on the display 210 of the analyte monitoring device 200 (2413). When the user actuates the softkey button associated with the softkey button label (2414) a second screen is output on the display 210 of the analyte monitoring device 200 (2415). In certain embodiments, the second screen is a home screen such as, for example home screen 300 (FIG. 3). In an embodiment, the second screen corresponds to the detected alert condition. For example, if the detected alert condition is a low battery, actuation of the softkey button with the corresponding softkey button label may take the user directly to a status display screen, such as was described above with reference to FIG. 18.*" [emphasis added; CoA]



78. The Court of Appeal agrees with the Respondents that a skilled person will understand the "softkey button" in paragraph [0275] of the PCT application to refer to a physical input button. This follows, for example, from paragraphs [0060], [0182] and [0193] of the PCT application. The first mode of user acknowledgement in feature 1.10, i.e. actuating an input button, is therefore disclosed in paragraph [0275] of the PCT application. The Court of Appeal disagrees, however, that this would be understood by the skilled person as the *only* mode of user acknowledgment of the alert screen.

79. Paragraph [0112] of the PCT application explains that a softkey label can be invoked not only by the actuation of an input button, but also by touching a touch sensitive area of the display corresponding to the softkey label. This is the second mode of user acknowledgement according to feature 1.10. Paragraph [0112] of the PCT application reads as follows:

> "[0112] *In certain embodiments, information mode home screen 300 also includes softkey labels 342 and 344. In certain embodiments, each softkey label 342 and 344 is outlined to help distinguish the label from the other icons and text on the information mode home screen 300. Further, each softkey label 342 and 344 specifies actions that occur when a corresponding input button 220 (FIG. 2A) is actuated or when a touch sensitive area of the display 210 corresponding to the softkey labels 342 and 344 are touched. For example, if the input button 220 corresponding to softkey label 342 is actuated, a full screen graph, such as, for example, timeline graph 400 (FIG. 4a) will be output on the display 210 of the analyte monitoring device 200. If however, the input button 220 corresponding to softkey label 344 is actuated, a menu, such as, for example, menu screen 600 (FIG. 6) will be output on the display 210 of the analyte monitoring device 200. Although specific softkey labels have been discussed, it is contemplated that various other softkey labels may be used. It is also contemplated that the softkey labels may be user selectable to enable a user to customize which features and data may be accessed directly from the information mode home screen 300. In certain embodiments, the analyte monitoring device 200 may "learn" which functions and display screens are used by the user most frequently and automatically update the softkey labels accordingly. For example, if a processor or control unit of the analyte monitoring device 200 detects that a user is consistently accessing a particular menu screen, a softkey label corresponding to that particular menu screen will be output on the information mode home screen 300. Although two softkey labels are shown in FIG. 3A, it is contemplated that any number of softkey labels may be output on the display 210."* [emphasis added; CoA]

80. The explanation in paragraph [0112] is provided in connection with the softkey labels on the home screen shown in Figure 3A. The skilled person will understand, however, that the same applies to the softkey labels on other screens, including the alert screen. This already follows from the broad wording of paragraph [0112] itself ("*Although specific softkey labels have been discussed, it is contemplated that **various other softkey labels may be used***." and "*Although two softkey labels are shown in FIG. 3A, it is contemplated that **any number of softkey labels may be output on the display 210***."). This also follows from other parts of the PCT application which disclose the use of a touch screen to invoke the functionality of a softkey label on other screens besides the home screen. Reference is made, for example, to paragraphs [0114], [0182] and [0185] of the PCT application which disclose the use of a touch screen to invoke the functionality of a softkey label on a menu screen, and paragraph [0198] which shows the same for an alarm setting screen.

81. In view of these general statements, the skilled person will directly and unambiguously understand that the alternative of invoking a softkey label by touching a touch sensitive area of the display, can also be used when acknowledging an alert screen. This is confirmed in paragraphs [0006], [0048] and claim 1 of the PCT application, which disclose that **any** actuator ("a plurality of actuators") can be used "*to affect further output of the analyte monitoring device corresponding to the detected alert condition*.". According to paragraph [0275] of the PCT application, this output may include returning to the home screen as meant in feature 1.10. The skilled person understands from the PCT application that the "plurality of actuators" also includes a touch sensitive part of the display (see e.g. paragraphs [0056] and [0112]). The fact that this mode of user acknowledgement is not specifically mentioned in paragraph [0275] of the PCT application does not mean that this mode would be excluded. The PCT application clearly and unambiguously teaches the opposite.

82. Finally, as the Appellant correctly notes, there is no indication in the PCT application that the use of a touch screen would be excluded for acknowledging the alert screen because this would be a "critical" operation. The PCT application does not make a distinction between "critical" and "non-critical" operations. Upon reading the PCT application, the skilled person will notice that in many

instances besides the acknowledgement of the alert screen in paragraph [0275], the PCT application only mentions the actuation of a physical input button. Reference is made, for example, to paragraphs [0199], [0202], [0203], [0206], [0209], [0211], [0212], [0225], and [0261] and the accompanying figures 9-17 and 20. This will not be understood by the skilled person to mean that in all these instances the use of a touch screen is excluded. This merely means that such use is not always explicitly mentioned in the PCT application. That does not take away the general teaching in the PCT application that touching a touch sensitive area of the display is one of the modes to invoke the functionality of a softkey label, including a softkey label for acknowledging the alert screen.

83. The Court of Appeal thus arrives at the same conclusion as the OD in section 4.1 of its decision and finds that there is no added matter in feature 1.10 of claim 1. Since feature 1.10 corresponds to feature 14.7 of claim 14, the same applies to claim 14.

Inventive step

84. Respondents further argue that the patented invention lacks an inventive step. In this appeal, the Respondents rely on the following combinations of documents:

    1. US 2009/221890 A1 (“Saffer”) combined with US 2006/0272652 (“Stocker”), US 2003/233257 (“Matian”) or the article “*Use of case-based reasoning to enhance intensive management of patients on insulin pump therapy*” by Schwartz et al. (“Schwartz”);

    2. The Dexcom Seven Plus CGM system (“Dexcom Seven Plus”) combined with Stocker, Matian or Schwartz.

85. In first instance, the Respondents relied on (i) Saffer in combination with one of 14 secondary references, (ii) the DexCom Seven Plus, and (iii) the Medtronic Guardian Real-Time CGM system (”Guardian Real-Time”). In total, Respondents relied on more than 30 prior art references. In their Objection to the Application for provisional measures (”Objection”), Respondents ”substantiated” their inventive step attack starting from Saffer with a few short remarks about each of the 14 secondary references without explaining why the alleged combinations would be made by a skilled person and how each of these combinations would result in a lack of inventive step. Appellant objected against this ”shotgun” approach in its Reply to the Objection (”Reply”), and argued in general that and why these combinations would not result in a lack of inventive step. During the oral hearing in first instance, the Respondents did not respond to these arguments, but instead, focused their invalidity-attack on a combination of Saffer and Stocker (Exhibit BB098).

86. In the Statement of response, Respondents indicate that in addition to the specific combinations mentioned above, all arguments in the Objection are maintained, also if these are not reiterated in the Statement of response. The Court of Appeal dismisses these non-reiterated arguments. A defendant who raises an obviousness attack in proceedings for provisional measures must substantiate why it considers it more likely than not that the patent will be held invalid based on the submitted prior art references (UPC_CoA_335/2023, 26 February 2024, NanoString v 10x Genomics, as rectified; UPC_CoA_528/2024 and UPC_CoA_529/2024, 25 November 2025, Amgen v Sanofi/Regeneron; UPC_CoA_646/2024, 25 November 2025, Meril v Edwards). This requires substantiated argumentation and not merely submitting a multitude of documents and quoting a few isolated sentences from each of these documents without explaining why a skilled person would make this combination and how the invention would be obtained in an obvious manner from this combination.

87. The Court of Appeal will therefore focus its assessment of inventive step on the specific combinations raised in this appeal. The Court of Appeal will additionally deal with the Guardian Real-Time, as the invalidity-attack in the Objection based on this prior art system did contain the required level of detail.

88. For the assessment of inventive step, the Court of Appeal will consider the application date of the

patent (30 August 2010) as the relevant date. Respondents correctly note that the four invoked priority documents do not disclose (at least) feature 1.12 and/or feature group 1.13 of claim 1, and the corresponding features of claim 14. Appellant did not contest this (cf. also section 4.2 of the OD's decision). This means that Saffer and the other documents cited above are prior art to the patent.

89. The Court of Appeal considers it more likely than not that the claimed invention is inventive and agrees with the decision of the OD in this respect (section 5.3).

The principles for assessing inventive step

90. The approach taken when establishing inventive step is set out by this Court in UPC_CoA_528/2024 and UPC_CoA_529/2024 (25 November 2025, Amgen v Sanofi/Regeneron, see also UPC_CoA_646/2024, 25 November 2025, Meril v Edwards).

91. First, the object of the invention (the objective problem) must be established. This must be assessed from the perspective of the skilled person with its common general knowledge at the application or priority date of the patent. In this assessment, it should be establshed what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in the context of the description and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect(s) that the skilled person on the basis of the patent understands is (are) achieved with the claimed invention. The claimed solution is obvious when at the relevant date, the skilled person, starting from a realistic starting point in the state of the art in the relevant field of technology, wishing to solve the objective problem, *would* (and not only: could) have arrived at the claimed solution (UPC_CoA_528/2024 and UPC_CoA_529/2024, 25 November 2025, Amgen v Sanofi/Regeneron).

92. A starting point is realistic if the teaching thereof would have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem. This may for instance be the case if the relevant piece of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention. There can be more than one realistic starting point and the claimed invention must be inventive starting from each of them.

93. The skilled person has no inventive skills and no imagination and requires a pointer or motivation that, starting from a realistic starting point, directs it to implement a next step in the direction of the claimed invention. As a general rule, a claimed solution must be considered not inventive / obvious when the skilled person would take the next step prompted by the pointer or as a matter of routine, and arrive at the claimed invention.

Application to the present case

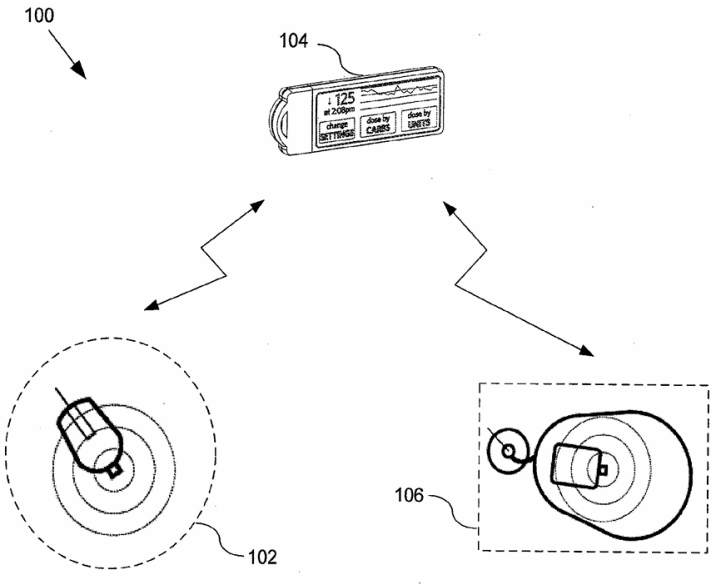
94. The patent relates to a CGM system which is designed to assist the user in diabetes management and glycemic control by providing a display which renders robust and comprehensive output that is based on user input and is easy for the user to access and understand (cf. paragraph [0004]). The contribution of the patented invention is the provision of a display that allows an improved human-machine interaction to assist the user in their glucose management, in particular by providing a real-time link between the monitored glucose levels and the reported events which is easy to access and to understand and facilitates the user's diabetes management. This is in line with the decision of the OD, which considered that "(..) *the defined user interface features provide an improved human-machine interaction process which credibly assists the user in performing their glucose management*" (section 5.3).

95. The problem to be solved is therefore to provide a display or user interface that allows an improved human-machine interaction and facilitates a user's diabetes management.

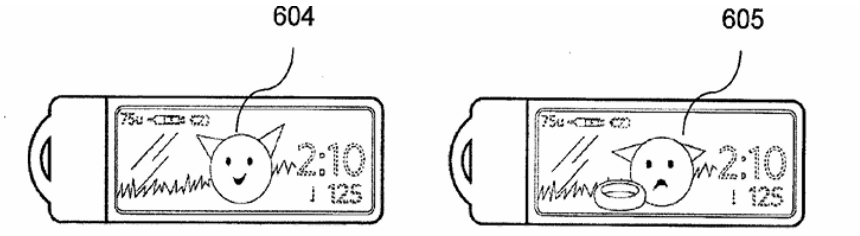
Saffer as a starting point

96. Saffer is a realistic starting point for assessing inventive step as it addresses a similar problem as the claimed invention.

97. Saffer describes a diabetes management system comprising a glucose monitoring system (having a glucose sensor and a transmitter as meant in features 1.2 and 1.3), a remote device (i.e. a receiver unit as meant in features 1.4 and 1.5) and a pump system. In Figure 1, the glucose monitoring system is designated with reference number 102, the remote device is designated with reference number 104 and the pump system is designated with reference number 106. Figure 1 of Saffer is depicted below:

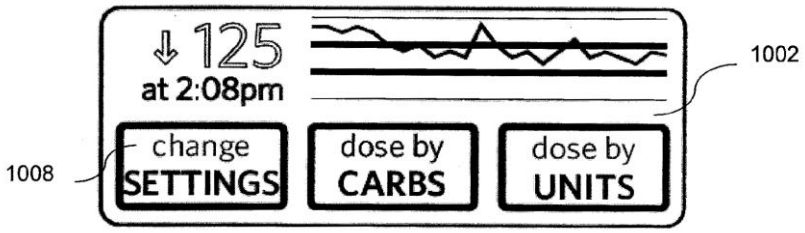


98. The remote device of Saffer provides an ambient display when it is locked (paragraph [0089]). Figure 6 of Saffer shows various examples of ambient displays. Reference is made, for example, to Figure 6B, depicted below:

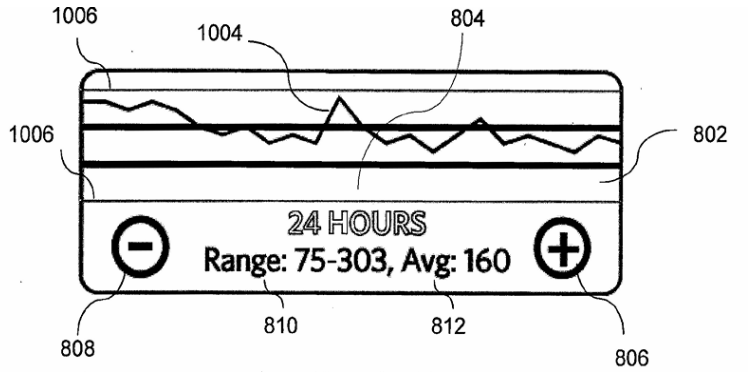


99. According to the Respondents, the ambient display must be regarded as the **home screen** of claim 1 (feature 1.7). Respondents argue that the ambient display has a (second) panel with glucose trending information which can be colour coded in accordance with paragraphs [0011] and [0065] of Saffer (features 1.7(b) and 1.12), and a (third) panel with system information, such as a battery life icon (paragraph [0066]) (feature 1.7(c)). In addition, according to paragraph [0090] of Saffer, a glucose monitoring graph 1004 can be "*customized to be part of the ambient display*". These monitored glucose levels would then be included in a first panel (feature 1.7(a)). The ambient display does not have a softkey label (feature 1.7(d)) which can be actuated to render a timeline graph screen (feature 1.13).

100. When the device is unlocked, a landing screen 1002 appears in place of the ambient display (paragraphs [0080] and [0089]: "*Once a patient unlocks the ambient display 600 (FIG. 6) the landing screen 1002 will appear.*"). The landing screen is shown, for example, in Figure 8 (first image):

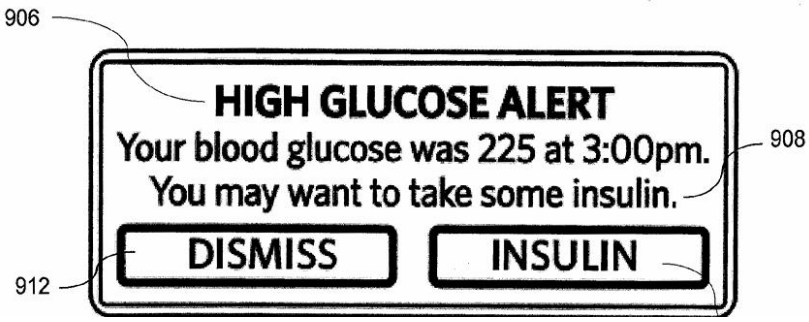


101. Saffer explains in paragraph [0080] that a glucose overview screen 802 will be displayed by tapping on the graph 1004 of the landing screen. The glucose overview screen is shown in Figure 8 (second image):



102. According to the Respondents, the glucose overview screen 802 is the **timeline graph display screen** of feature 1.13. The timeline graph on screen 802 contains a plurality of monitored glucose levels 1004 (feature 1.13(a)) and upper and lower guide lines 1006 that indicate upper and lower glucose targets (feature 1.13(b)). The timeline graph does not contain event data icons (feature 1.13(c)) and *a fortiori,* the timeline graph does not allow the user to select an event data icon to display details of that event (feature 1.13(d)).

103. Saffer discloses in Figure 9 a visual alert, which can be considered as the **alert screen** of feature 1.9:



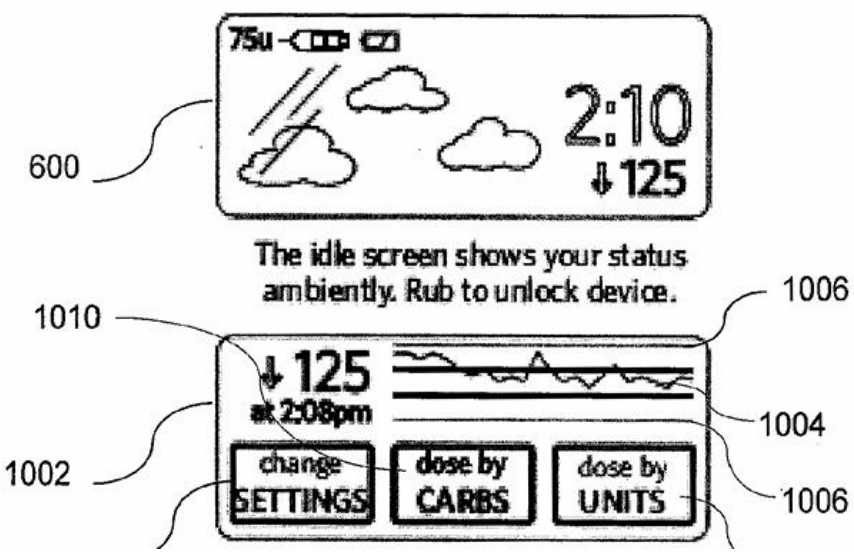
104. When the user actuates the "DISMISS" softkey button, the alert screen disappears (paragraph [0087]). Saffer does not disclose which screen is then displayed (feature 1.10).

105. It is undisputed between the parties that Saffer does not (fully) disclose features 1.13(c) and 1.13(d). The Respondents argue that at least "part" of these features is disclosed in Saffer, because event data would be stored in memory 318 to generate a patient profile (paragraphs [0046] and [0047]). However, this data is not displayed to the user on the remote device and is primarily intended to be used for internal processes, such as the initiation and execution of the insulin dosage cycle (cf. paragraphs [0072] and [0073]). The Court of Appeal therefore agrees with the Appellant that this data serves a different purpose and is distinct from features 1.13(c) and 1.13(d) of claim 1. These features are therefore not disclosed in Saffer. For the same reason, the aforementioned paragraphs in Saffer do not support Respondents' argument that the claimed invention merely provides an alternative arrangement to that in Saffer.

106. The Appellant further argues that the ambient display does not have a softkey label (feature 1.7(d)) which can be actuated to render a timeline graph screen (feature 1.13). The Court of Appeal agrees.

107. In order to read a softkey label onto the ambient display, the Respondents refer to paragraph [0090] of Saffer which states that the glucose monitoring graph 1004 can be customized to be part of the ambient display. When this graph is included on the *landing screen* 1002, tapping on the graph renders the glucose overview screen 802 (paragraph [0080]). The Respondents argue that when this same functionality would be implemented on the ambient display, and, moreover, "tapping" would be selected as means for unlocking the device (paragraph [0089]), tapping on graph 1004 on the ambient display would have a twofold result: the device would be unlocked and the glucose overview screen 802 would subsequently be displayed. This is not what a skilled person would understand from Saffer.

108. As noted above, paragraph [0080] of Saffer teaches that upon unlocking the device *"the landing screen 1002 appears*". This is also disclosed in paragraph [0089] ("*Once a patient unlocks the ambient display 600 (FIG 6) the landing screen 1002 will appear.*") and is shown in Figure 10. The first image of Figure 10 shows the ambient display, which is replaced by the landing screen 1002 when unlocking the device (the second image):



109. There is no indication in Saffer that in deviation of these disclosures, the glucose overview screen 802 would be rendered when a customized form of the glucose graph is included on the ambient display. This would imply that when unlocking the device, the user would by-pass the landing screen, which would be in conflict with the clear teaching of Saffer. Moreover, even when the glucose graph would be shown on the ambient display, Saffer does not disclose that tapping on such graph on the ambient display would lead to the glucose overview screen or how this would be achieved. Saffer is silent about this.

110. Hence, according to the Court of Appeal, there is (in any event) no disclosure in Saffer of a softkey label on the ambient display (feature 1.7(d)) which can be actuated to render a timeline graph screen (feature 1.13), and a timeline graph that comprises event data icons (feature 1.13(c)) which can be selected by the user to obtain further details of that event (feature 1.13 (d)).

111. Respondents argue that these differences cannot provide an inventive step over Saffer, first because the measures of feature group 1.13 would be non-technical and should therefore be excluded from the assessment of inventive step, and second because the features of feature group 1.13 are obvious in view of Stocker, Matian or Schwartz. The Court of Appeal disagrees with both arguments.

Role of feature group 1.13 in the assessment of inventive step

112. A claim feature should not be excluded from the assessment of inventive step merely because it is a non-technical feature, i.e. a feature which, on its own, would be considered a "non-invention" under Art. 52(2) EPC. A feature that is non-technical as such may still contribute to the technical character of the claimed invention as a whole by its interaction with the other claim features. Therefore, the interrelationship and functioning of the claim features must be assessed together (cf. Technical Board of Appeal EPO, 22 September 2002, T 641/00 (COMVIK); Enlarged Board of Appeal EPO, 10 March 2021, G1/19).

113. In the present case, the combined features of claim 1 (and claim 14) provide the aforementioned improved user-machine interaction that facilitates the user's diabetes management and glycemic control. This contribution is clearly technical in nature.

114. The Court of Appeal considers the measures of feature group 1.13 to be technical in nature, and, in any event, to contribute to the technical character of the claimed invention. The measures of feature group 1.13 ensure that the events that are entered by the user (cf. paragraph [0194] of the patent) are first converted into event data icons, which are then included on a timeline graph together with the monitored glucose levels obtained from the glucose sensor and transmitted by the transmitter to the receiver unit. The timeline graph screen that contains the timeline graph is easily accessible for the user by providing a softkey label on the home screen that can be actuated with an input button or a touch screen. In case the user wishes to obtain more information about a certain event, the system ensures that the user can easily obtain such information by using an input button or touching the event data icons on the display. These are all technical measures resulting in the technical effect of improved assistance to the user's diabetes control by providing means to identify the effect of certain events on the monitored glucose levels (cf. paragraphs [0090] and [0093], last sentence). The fact that the user ultimately decides which action to take based on the information provided by the system, does not make the features non-technical. The features generate the relevant displays through user interaction and technical means resulting in the technical effect of improved diabetes control. These measures are technical and certainly contribute to the technical character of the invention. They should therefore be considered for assessing inventive step.

Absence of a pointer in Saffer

115. As noted above, the skilled person has no inventive skills and requires a pointer or motivation that, starting from a realistic starting point (Saffer in this case), directs the skilled person to implement the claimed invention. According to the Respondents, Saffer would provide such a pointer, which would direct the skilled person to Stocker where it would find the missing elements of feature group 1.13. The Court of Appeal disagrees.

116. As to the pointer to the skilled person, Respondents refer to the remark in paragraph [0080] of Saffer that "*other information regarding the graph*" may be displayed on the glucose overview screen 802. As examples of such "*other information regarding the graph*", paragraph [0080] mentions the blood glucose range 810 and the blood glucose average 812 depicted in Figure 8 (see paragraph 101 above). This "other information" is substantially different from the events of features 1.13(c) and (d). That also applies to the "*line showing when an insulin dosage should be administered*" mentioned in paragraph [0090]. This sentence does not propose to include in the graph the insulin doses that were administered to the user, as Respondents suggest, but a "line" for indicating when an insulin dosage "*should be administered*". This will be understood by the skilled person as a possible threshold line, similar to the glucose target lines 1006, that warns the user that insulin should be administered when the monitored glucose level falls below the indicated line. Also this remark therefore provides no pointer to the use of the event data icons of features 1.13(c) and 1.13(d).

117. Such a pointer can neither be found elsewhere in Saffer. To the contrary. Although Saffer explains that "*all of the raw data collected on a patient*" (such as insulin doses, warnings and their time of occurrence) is stored in the remote device (paragraph [0046]), there is no suggestion in Saffer that

this data is displayed to the user on the remote device. This appears to be in line with the desire in Saffer to provide a system that "*involves less interpretation by the patient (e.g. fewer numbers)*" (paragraph [0008]).

118. The Court of Appeal is therefore of the opinion that Saffer does not contain a pointer to the measures of feature group 1.13.

Saffer combined with Stocker

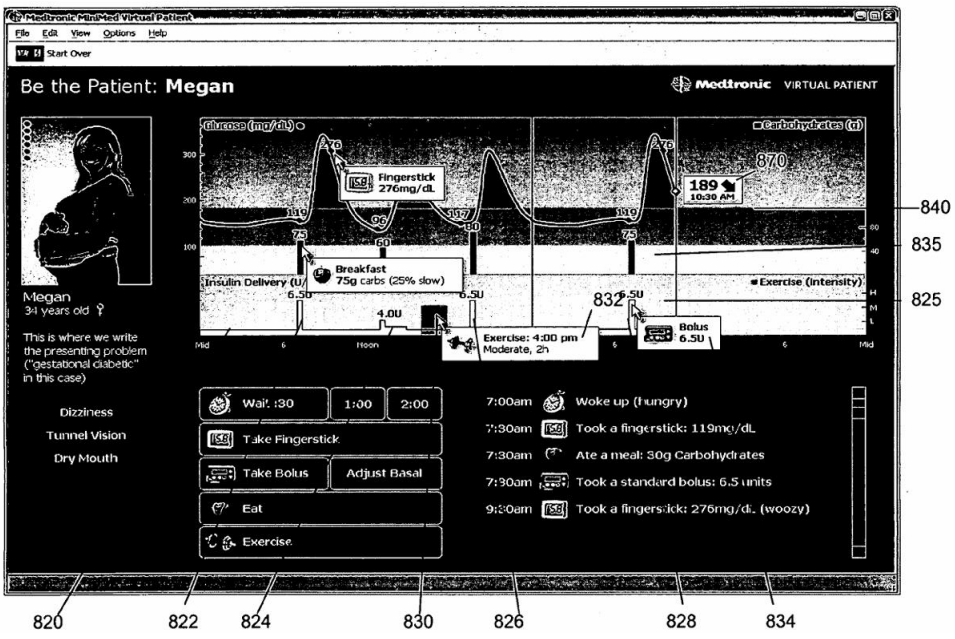
119. Moreover, even if the skilled person would derive some motivation from Saffer to further develop its monitoring system, the invention would not be obvious in view of Stocker.

120. Stocker describes a "*method and apparatus for assisting patients and doctors in managing insulin delivery to diabetes*" and proposes a "*virtual patient software system that provides a patient and/or a medical practitioner to monitor blood glucose levels in response to the modification of different aspects of insulin delivery, food intake, and an exercise program*" (paragraph [0002]). In its introduction, Stocker criticises the CGM systems of the prior art for not having a "*teaching or educational tool that quickly (in real-time) provides a patient or a medical professional (..) with simulated information regarding the effects of certain intakes or treatments on a patient's blood glucose level*." (paragraph [0008]) (emphasis added; CoA).

121. Against this background, the virtual patient software of Stocker generates simulated or estimated blood glucose levels for the patient based on a metabolic model that most closely matches the characteristics of the actual patient (cf. e.g. paragraphs [0043], [0050]-[0053] and [0063]). Based on this metabolic model, the virtual patient software calculates how the simulated blood glucose levels will react to certain events that are entered into the system. See, for example, paragraph [0080] of Stocker:

> "*After a meal and/or snack combination is selected, the selected patient model of the virtual patient software takes into consideration not only the number of grams of carbohydrates, but also whether the carbohydrates are slow-acting or fast-acting. After either the number of carbohydrates has been entered or the meal has been selected, the virtual patient software determines the effect of the ingested carbohydrates on the selected patient's blood glucose level and displays the resulting blood glucose level on graph 840. In addition, the number of grams of carbohydrates is displayed on graph 835 of the graph display section*."

122. The Respondents refer to Figure 9 of Stocker:



123. This figure shows the graph display section of the manipulate and view screen of the virtual patient software in Stocker (paragraph [0067]). Graph 840 displays the patient's **simulated** glucose levels over the indicated time period, graph 835 illustrates the carbohydrates consumption entered into the system, graph 825 illustrates the entered insulin intake and square wave 830 indicates the entered exercise period (paragraphs [0067] and [0068]). Stocker explains that when a cursor is placed over the exercise graph or on the insulin intake, a pop-up window is displayed that provides further details (paragraph [0067]). Paragraph [0069] explains that the results shown in Figure 9 are simulated based on a virtual patient model named "Megan" (cf. paragraph [0063]):

> "*For example, if Megan is chosen as the patient model and a time is selected (for example, 7:00 am), an initial reading of 119 may be read out from Megan's patient model. If the take fingerstick selector toolbar or module is selected, then a fingerstick reading appears on the graph 840. In this embodiment of the invention, a patient will not be inputting his or her own fingersticks. Instead, the patient model of the Virtual Patient software provides the fingerstick readings. (..) In other words, the inputs are entered, they are input into the patient model (simulation engine), and the patient model (simulation engine), utilizing its known characteristics and reading (patient's parameters), determines a glucose reading incorporating the effect of the inputs of the glucose reading."* [emphasis added; CoA]

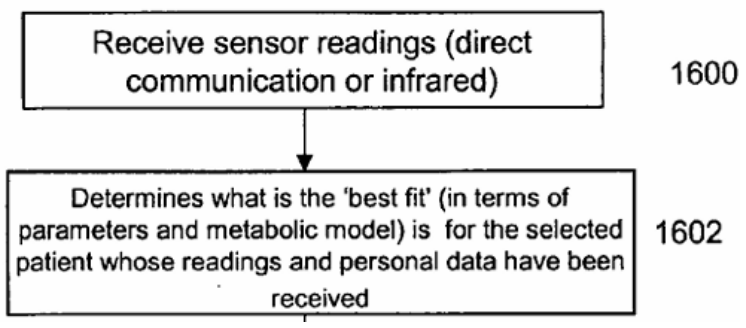
124. Reference is also made in this context to paragraph [0070]:

> "*In an embodiment of the invention, if the glucose sensor is activated by selecting the glucose sensor toolbar, then the patient model supplies glucose readings as if they were input from a glucose sensor. In other words, in this embodiment of the invention, a patient's actual glucose sensor is not hooked up to the Virtual Patient software and is not providing readings to the Virtual Patient software*."

125. Stocker also discloses embodiments in which actual patient data is used. This is, for example, described in connection with Figure 16 (paragraphs [0097]-[0111]). Also in that case, the virtual patient software uses a patient model to simulate the blood glucose levels. Reference is made, for example, to paragraph [0098] of Stocker:

> "*This means that the software adapts the parameters of the underlying metabolic model to best approximate the glucose readings of a real patient. Under these operating conditions, the patient model (patient parameter fit model 160) may be determining whether the patient's glucose sensor readings correspond or are similar to what the patient model (patient parameter fit module 160) expected for the patient during the measured time period."*

126. Reference is also made to the first two boxes of Figure 16:



127. Stocker thus concerns a substantially different system than that of the patented invention. Where the latter is a CGM system in which the *actual* blood glucose levels are monitored and a real-time link is provided between these actual glucose levels and the reported events, the system in Stocker is based on *simulated* glucose levels and analysis of how these simulated glucose levels will react to certain events that are entered into the system. Also when the graphs generated by the virtual

patient software of Stocker include actual patient data and events, as Respondents argue with reference to paragraph [0107], this data forms an integral part of Stocker's simulation system which differs substantially from the CGM system of the patented invention.

128. Saffer also concerns a CGM system that is based on the actual glucose levels of the user. As noted above, there is no hint in Saffer to improve its monitoring system by applying the measures of features 1.13 (c) and (d) to the graph in the glucose overview screen 802. Respondents' approach would require the skilled person to nevertheless turn to the unrelated simulation system of Stocker and isolate from that system some elements of Figure 9 for inclusion in the glucose overview screen 802 of Saffer. That approach is based on hindsight. Even if the skilled person *could* have taken these steps, it cannot be said that the skilled person *would* have done so and would thus have arrived at the claimed solution in an obvious manner. Moreover, also in Stocker, features 1.7(d) and 1.13 are missing. These features contribute to an improved human-machine interaction by further facilitating the use of the device.

129. Thus, the Court of Appeal concludes that claim 1 is more likely than not valid in view of Saffer combined with Stocker.

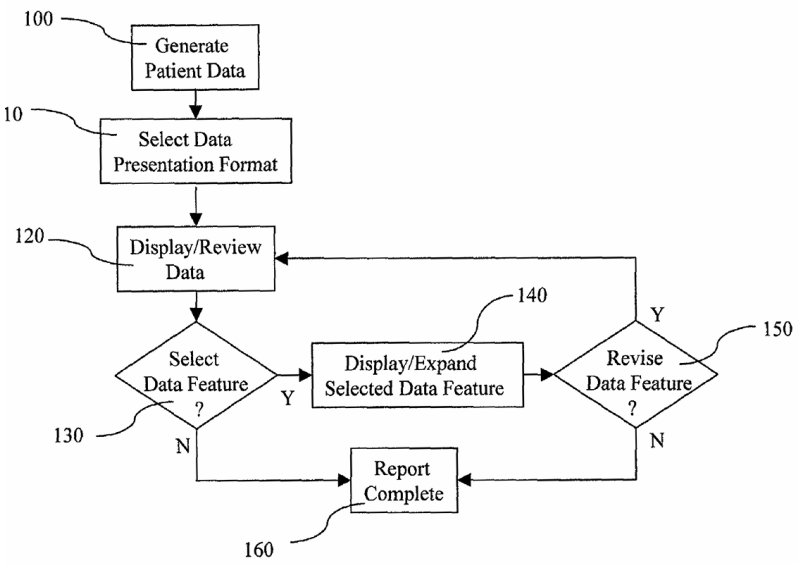
Saffer combined with Matian

130. Even leaving aside the absence of a pointer in Saffer (see above), the claimed invention is neither rendered obvious in view of the combination of Saffer and Matian.

131. Matian provides a specific system and method for the generation of patient data reports (paragraph [0006]), which can be applied, for example, with data of diabetes patients (paragraph [0025]). Matian explains that the disclosed method allows interactive revision of selectable parts of a patient report prior to creating a final report, allowing the creation of patient data reports without unnecessary generating multiple reports prior to finalizing a report (paragraph [0050]). See, for example, paragraph [0062] of Matian:

> "*As can be seen from the above, the method of the invention allows the user to generate a patient data report that is tailored for particular needs or uses, without having to needlessly re-iterate the generation of complete, but unwanted, patient data reports until a final report format is achieved.*"

132. Figure 2 contains a flow chart of Matian's method of report generation and is depicted below:



133. According to Matian, its system and method allow physicians to select a data presentation format that reflects trends to assess the patient's progress or the effectiveness of a treatment regime (e.g.

paragraphs [0053] and [0063]).

134. Respondents refer to the trend chart described in Table 2 and shown in Figure 5B, which is based on the logbook data of Figure 5A. Both figures are depicted below:

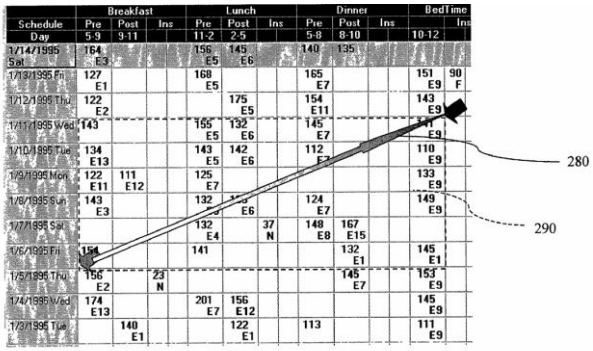


FIG. 5A

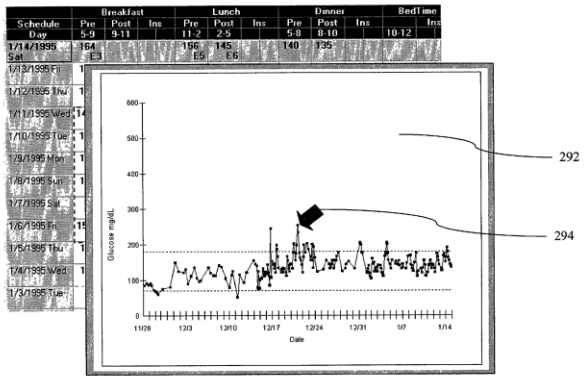


FIG. 5B

135. Paragraph [0074] of Matian explains that the trend graph of Figure 5B is obtained upon selection of the trend line 280 in Figure 5A. Using the report generation program of Matian, the user can create further displays that expand upon the selected data points and may superimpose data from the logbook in relation to certain events.

136. The Court of Appeal is of the opinion that Matian does not teach the skilled person how to improve a human-machine interaction process to facilitate glucose management in accordance with the invention. Matian relates to a specific method of report generation that can be used for retrospective analysis of patient data. It does not relate to a glucose monitoring system in which a real-time link is provided between monitored glucose levels and reported events. This is also the case for the "sample readers" 20 and 24 described in paragraphs [0033] and [0034] of Matian, to which Respondents refer. The functionality of "programming 22" in these sample readers is unclear. In particular, it is unclear whether "programming 22" is similar to the report generation programming described in Figure 2 (cf. paragraphs [0051] and [0064]) and Table 2 (paragraph [0071]). Thus, whether a graph such as Figure 5B can be generated on sample readers 20 and 24 is not unambiguously disclosed.

137. In any event, these readers are an integral part of the specific report generation system depicted in Figure 1 and described in Matian:

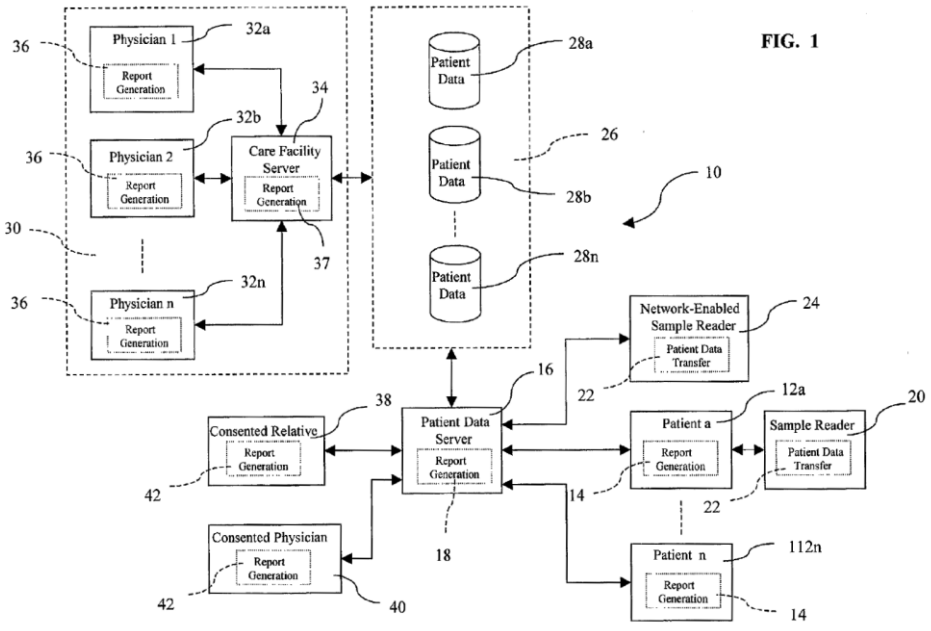


FIG. 1

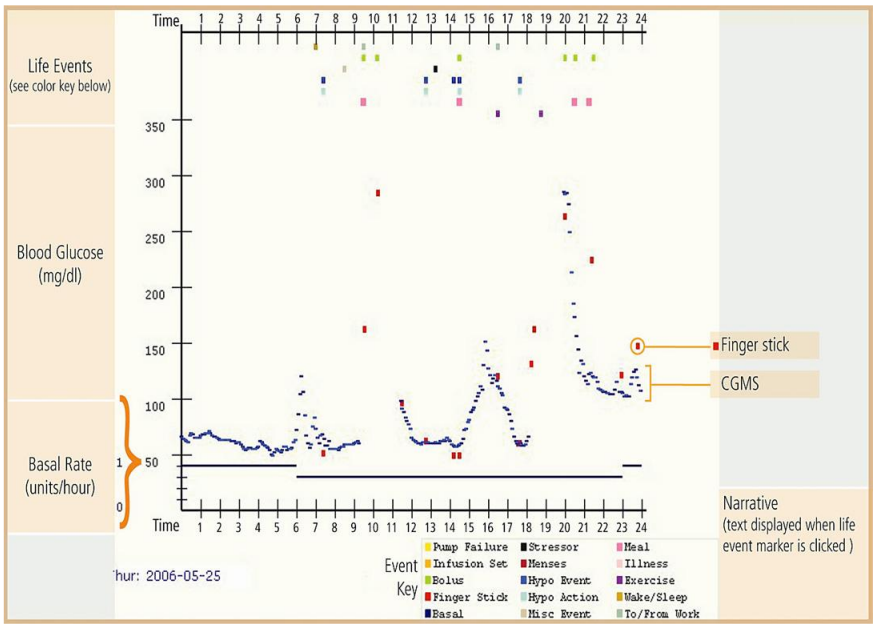
138. Without knowledge of the invention, there was no reason for the skilled person to turn to Matian and to select from this publication the isolated features chosen by the Respondents and to apply these to the glucose overview screen 802 of Saffer. The skilled person on the application date of the patent had no motivation to do so. Moreover, also in Matian, features 1.7(d) and 1.13 are not disclosed.

Saffer combined with Schwartz

139. Again leaving aside the absence of a pointer in Saffer, the Court of Appeal is of the opinion that the claimed invention is neither rendered obvious in the combination of Saffer and Schwartz.

140. Schwartz describes a case study with diabetes patients based on a so-called "case-based reasoning" ("CBR") approach. CBR is described in Schwartz as an artificial intelligence approach that uses past problems and solutions to determine solutions for current problems. When a new problem is encountered, a CBR based system searches its case base for the most similar past case(s).

141. To handle the vast amount of data that is collected in this method, a software tool was developed in the reported study to aid the physicians in their retrospective data analysis. For this purpose, patients were asked to collect glucose monitoring data and to provide daily logs of events. The clinical data was then transferred to an external computer and analysed by a physician. The software tool provides a graphic presentation of the clinical data. Figure 2 of Schwartz, to which Respondents refer, shows a screen generated by this software tool:



142. As can be seen, in addition to the glucose values, the graph contains other information, such as insulin dosages, timing of meals, exercise etc. (cf. page 605, right column). Schwartz explains that the graphic representation of this data helps the physician to establish trends and propose treatment therapies. Reference is made, for example, to page 606, left column, of Schwartz:

> "*This enhanced the physician's ability to detect a problem, determine the potential causes and effects of life events on glucose levels, and see how the patient responded to the problem. This allowed development of case-based solutions intended to prevent or correct problems if they were seen again.*"

143. Reference is further made to page 609, left column, of Schwartz:

> *"The integration of life-event data, glucose levels, and basal/bolus insulin doses in a graphic presentation helps physicians identify glucose trends more readily and adjust therapy more effectively.*"

144. Schwartz thus primarily concerns retrospective analysis of large volumes of data to assist physicians to develop and adjust existing treatment regimes. This differs substantially from the CGM system of Saffer, which is meant to provide easy-to access information to assist the user in their diabetes management (cf. paragraph [0008] of Saffer). Trend analysis, as described in Schwartz, is performed in Saffer on an external computer (paragraph [0040]). If anything, the teaching of Schwartz could be applied in that environment. Schwartz does not teach the skilled person to modify the glucose overview screen 802 of Saffer on the user's remote device and to apply the other adaptations required to arrive at the solution of claim 1 of the patent.

145. This can neither be derived from the remark at the end of Schwarz that "*in the future, once proven safe and effective*" the software of Schwartz could be incorporated in patient devices. This remark is merely hypothetical and does not provide any details of how the system of Schwartz would be implemented on a user device. Even assuming that the skilled person *could* consider making certain changes to the remote device of Saffer based on this remark, Schwartz certainly does not teach the skilled person that and how Saffer's device *would* be adapted to arrive at the solution of the patented invention, not only including features 1.13(c) and (d), but also features 1.7(d) and 1.13, while maintaining all other features of the patented glucose monitoring system.

<u>Starting from the Dexcom Seven Plus</u>

146. The Dexcom Seven Plus is a CGM system that was launched in 2009. Respondents refer to the user guide of the Dexcom Seven Plus (Exhibit BB081) and argue that it discloses all features of claim 1 except some "insignificant" and "non-technical" display details. According to the Respondents, it was obvious for the skilled person to implement these missing elements in the Dexcom Seven Plus, either based on their common general knowledge, or in view of Stocker, Matian or Schwartz. The Court of Appeal disagrees.

147. It is not in dispute between the parties that features 1.13(c) and 1.13(d) of claim 1 are absent in the Dexcom Seven Plus. Respondents refer in this context to Section 6.1 of the user guide (page 81), which explains that a user can enter an event using the events submenu. Section 6.1 states that "*the events can be **viewed later** with the DexCom Data Manager software*". This software tool can be installed on an external computer and can then be used to view "*trends and track patterns*" using the data collected by the Dexcom Seven Plus (cf. Section 6.2 on page 84 of the user guide).

148. It is thus clear from the user guide that the events entered by a user were not intended to be viewed on the CGM device of the Dexcom Seven Plus ("*viewed later with the DexCom Data Manager software*). It is further clear from the user guide that the timeline graph generated by the Dexcom Seven Plus (cf. pages 69-70 of the user guide) did not include event data icons (feature 1.13.(c)) that could be selected by a user to obtain further details of the event (feature 1.13(d)).

149. The user guide does not give details of how the events were presented on the external computer using the DexCom Data Manager software. Even assuming that Figure 1 in Bailey (Exhibit BB071) shows the output of the DexCom Data Manager software on an external computer, as Respondents asserted in the Objection, the measures of feature group 1.13 are not disclosed. As indicated above, the display in feature 1.13 refers to the display of the receiver unit, not to a separate display on an external computer. Respondents' assertion that it would be obvious for the skilled person to implement the same graph on the display of the receiver unit is without basis. There is no indication for this implementation in the submitted materials of the Dexcom Seven Plus. The user guide teaches the opposite in Sections 6.1 and 6.2.

150. For the same reasons as discussed above, the skilled person would neither have arrived at the subject matter of claim 1 based on the Dexcom Seven Plus in combination with Stocker, Matian or Schwartz. The Court of Appeal is therefore of the opinion that it is also more likely than not that claim 1 is valid starting from the Dexcom Seven Plus.

Starting from the Guardian Real-Time

151. In the Objection, Respondents also refer to the Guardian Real-Time to argue lack of inventive step. In particular, Respondents refer to the user guide of the Guardian Real-Time (Exhibit BB076) and the CareLink Personal software guide (Exhibit BB077). The Respondents did not further discuss the Guardian Real-Time in the appeal.

152. The CareLink Personal software can be installed on an external computer. When the CGM device of the Guardian Real-Time is connected to the external computer, the data stored in the CGM device can be read on the external computer (page 5 of the Carelink Personal software guide). The software on the external computer can render glucose measurement graphs and allows the user to enter events using a logbook. There is no disclosure that these events are included in a timeline graph on the CGM device of the Guardian Real-Time (feature 1.13.(c)) or that a user could obtain further details of the events included in the timeline graph by using an input button or a touch screen (feature 1.13(d)). For the same reasons as discussed above in relation to the Dexcom Seven Plus, the patented invention is not obvious in view of the Guardian Real-Time.

Conclusion on validity

153. The Court of Appeal concludes that on the balance of probabilities it is more likely than not that claim 1 of the patent will be held valid. Because the features of claim 14 correspond to those of claim 1, the same applies *mutatis mutandis* to claim 14.

VII. Infringing acts

154. The Court of Appeal is of the opinion that both Respondents performed infringing acts in the UPC territory.

155. It is undisputed between the parties that Respondents do not sell or offer to sell receiver units (mobile phones) according to feature 1.4. As a result, the Respondents do not directly infringe claim 1 of the patent (Art. 25 (a) UPCA). The Respondents have also not been shown to directly infringe claim 14 (Art. 25 (b) UPCA). They have not been shown to use the patented process themselves, or to have offered the process in an infringing manner, i.e. by offering the patented process under the conditions of Art. 25 (b) UPCA for other than private and non-commercial use by diabetes patients (Art. 27 (a) UPCA). Both Respondents have indirectly infringed claims 1 and 14 of the patent.

Respondent 2

156. In its brochures, via its website (https://glucomenican.com) and at various exhibitions, Respondent 2 has promoted and sold the Sensor Assembly and the On-Body Device of the GlucoMen iCan in the UPC territory for use together with the iCan App to be installed on the users' mobile phones. The Sensor Assembly and the On-Body Device of the GlucoMen iCan contain a glucose sensor (feature 1.2) and a transmitter unit (feature 1.3), which communicates with the iCan App. These components are essential means of the glucose monitoring system of claim 1 and the method of glucose monitoring of claim 14. They are suitable and intended for use together with the iCan App and an iCan enabled mobile phone, and hence, for putting the invention according to claims 1 and 14 into effect in the UPC territory. Also, Respondent 2 knows this or should have known this. That constitutes indirect infringement of claims 1 and 14 according to Art. 26(1) UPCA (cf. Application, Section 6.3). The fact that the essential means are offered and supplied to diabetes patients for their private and non-commercial use does not alter this (Art. 26(3) UPCA).

Respondent 1

157. Respondent 1 has also been actively involved in the marketing of the GlucoMen iCan in Europe, including in the UPC territory, including by offering the iCan App to users in Europe via the Apple and Google app stores (Exhibit D6). This constitutes indirect infringement of claims 1 and 14 of the patent. The iCan App is an essential means of the glucose monitoring system of claim 1 and the

method of glucose monitoring of claim 14. These means are suitable and intended for use together with the other components of the GlucoMen iCan and an iCan enabled mobile phone, and hence, for putting the invention according to claims 1 and 14 into effect in the UPC territory (cf. Application, Section 6.3). Also, Respondent 1 knows this or should have known this.

158. The Court of Appeal further notes that an infringer within the meaning of Art. 63 UPCA in conjunction with Art. 25 and Art. 26 UPCA is not only someone who themselves carries out the acts referred to in Art. 25 and 26 UPCA, but also someone to whom the acts of the third party are attributable, because they are an instigator, accomplice or accessory (UPC_CoA_53472024, 19/2025 and 683/2024, 3 October 2025, Philips v Belkin). For this reason, not only Respondent 1's own acts described above are to be taken into account in determining whether actual or threatened infringement has occurred, but also the acts of Respondent 2 with whom Respondent 1 has a strategic partnership pursuant to which Respondent 2 would offer and sell the products manufactured and prepared for the European market by Respondent 1, and Respondent 1 itself would offer and sell the iCan App. Also for this reason, Respondent 1 can be considered as an infringer within the meaning of Art. 63 UPCA.

VIII. Prerequisites of provisional measures and balance of interest

159. The conclusion from the above is that the Court of Appeal considers on the balance of probabilities that it is more likely than not that the patent is infringed and valid. Respondents' argument that an injunction should nevertheless not follow is rejected.

Urgency

160. When weighing up the interests of the parties, the Court takes into account any unreasonable delay in applying for provisional measures, as set out in R. 211.4 RoP. In case the patent proprietor's conduct shows that enforcing its rights is no longer urgent, there is no need to order provisional measures.

161. The time limit within the meaning of R. 211.4 RoP is to be calculated from the date on which the applicant became aware or should have become aware of the infringement that would enable him, in accordance with R. 206.2 RoP, to file an application for provisional measures with a reasonable prospect of success. Thus, the decisive point in time is when the applicant has, or should have had, after exercising due diligence, the necessary facts and evidence to establish infringement within the meaning of R. 206.2(d) RoP (UPC_CoA_182/2024, 25 September 2024, Mammut v Ortovox; UPC_CoA_446/2025, 13 August 2025, Boehringer Ingelheim v Zentiva; UPC_CoA_317/2025, 28 November 2025, Barco v Yealink).

162. Whether there has been an unreasonable delay within the meaning of R. 211.4 RoP depends on the circumstances of the individual case. In this context, it should also be noted that no party can be expected to initiate proceedings without preparation. Rather, an adequate preparation of the proceedings is required. The applicant should only apply for a preliminary injunction if it has reliable knowledge of all the facts that make legal action in PI-proceedings promising.

163. Based on these principles, the Appellant did not wait unreasonably long before filing its application for provisional measures.

164. According to the Respondents, the Application lacks urgency, because the Appellant did not act for 1,5 years against the Sinocare iCan i3 although this product is technically the same as the GlucoMen iCan and also uses the iCan App. Also after the announcement of the introduction of the GlucoMen iCan in December 2024, the Appellant did not act with sufficient diligence against the introduction of the GlucoMen iCan. According to the Respondents, even if it would be assumed that the relevant date for urgency is 24 April 2025, when the user guide for the GlucoMen iCan was published on the website and the products became publicly available in different European countries, the Appellant waited too long (approximately two months) before starting these PI-proceedings. The Court of

Appeal does not agree.

165. The Court of Appeal is of the opinion that 24 April 2025 is the decisive date for establishing whether urgency exists. On that date, the user guide for the GlucoMen iCan became available via the website of the Respondents, and the GlucoMen iCan products became available for the public in various European countries. The Respondents contested this date but did not provide any evidence of a different date. Only as of this date, the Appellant was in a position to investigate the design and functionality of the GlucoMen iCan, with and without the iCan App, and the (extent of the) infringing activities by Respondents. The Appellant acted diligently as of 24 April 2025 until their submission of the Application approximately eight weeks later.

166. Immediately after 24 April 2025, the Appellant purchased samples of the GlucoMen iCan products which they received on 29 April 2025. Upon receipt of these samples, counsel for the Appellant dispatched the products to the United States for analysis, including through physical examination and X-ray photographing (which was relevant for a number of hardware related features of the claims, including features 1.3 and 1.4). In addition, Appellant tested the products on actual users to monitor and document whether and how the system processed the glucose levels and other entered data. Even assuming that these tests were not very time consuming, as Respondents argue, it cannot be said that the Appellant did not act diligently. The tests were part of a larger investigation of the GlucoMen iCan for possible infringement and needed to be done carefully, both for establishing infringement and for collecting the required evidence for these front-loaded proceedings. Moreover, the technical evidence was not the only evidence that the Appellant needed to assess its position and prepare the proceedings for provisional measures.

167. In parallel with the technical testing, the Appellant investigated the marketing activities of the Respondents, including the extent of their activities within the UPC territory, the pricing of the products in the various countries, Respondents' efforts to enter the reimbursement market in these countries, etc. This information was necessary for the Appellant to assess the impact of Respondents' market entry and the need to start PI-proceedings to protect its position. As part of its investigations, Appellant was able to uncover information about the actual and contemplated activities of Respondents on the Italian tender- and reimbursement market. This information became available in the beginning of June 2025 and was needed for Appellant to substantiate the necessity and interest in the provisional measures. A few weeks later, on 27 June 2025, Appellant filed the Application.

168. Under these circumstances, it cannot be said that Appellant has pursued its claims so negligently and hesitantly that it can objectively be assumed that it had no interest in the rapid enforcement of its rights and it therefore does not appear appropriate to order provisional measures. Pursuant to R. 211.2 RoP, the Court may at any time require the applicant for provisional measures to produce all reasonably available evidence. This must be done swiftly in the context of the PI-proceedings. An applicant must therefore be thoroughly prepared and, in particular, be able to prove from the outset the alleged infringement as well as the circumstances justifying the issuance of a preliminary injunction. If the applicant has timely and diligently prepared all relevant aspects of the case, such as the Appellant in this case, it cannot be said to have acted negligently in pursuing its claims.

169. The argument of the Respondents that the case lacks urgency because Appellant did not act for 1,5 years against the sale of the Sinocare iCan i3 is unfounded. The current proceedings are aimed at the GlucoMen iCan. The introduction of the GlucoMen iCan was announced in December 2024. For determining the urgency with respect to the GlucoMen iCan, Appellant's activities in connection with the Sinocare iCan i3 are not decisive. Moreover, the reason why Appellant did ask for provisional measures with respect to the GlucoMen iCan as opposed to the Sinocare iCan i3 are not unreasonable. While the Sinocare iCan i3 was only sold by Respondent 1 in the cash pay segment of the market, the GlucoMen iCan was intended to be sold in both the cash market (resulting in the entry of yet another competing product) and the much larger and more profitable reimbursement market. In these markets, the GlucoMen iCan would be distributed by a powerful, European

pharmaceutical distributor (Respondent 2). Under these circumstances, it is understandable that the Appellant decided to take provisional measures against the GlucoMen iCan as opposed to the Sinocare iCan i3.

170. Respondents' argument that the Appellant could have acted against the GlucoMen iCan before the launch of the product in April 2025 because the GlucoMen iCan was technically the same as the Sinocare iCan i3 and both products used the same app, is equally unfounded. When the launch of the GlucoMen iCan was announced in December 2024, no technical details were provided. It was therefore unknown to the Appellant at that time that the GlucoMen iCan was technically the same as the Sinocare iCan i3, as Respondents now indicate. Around that time, Respondents referred to the GlucoMen iCan in various materials as a "new" and even as a "brand new" product. It was impossible for Appellant to determine with sufficient certainty that this "new" product actually infringed its patent before it was able to obtain physical samples of the product in April 2025.

171. It is noted in this respect that a request by Appellant's counsel in December 2024 to provide further information about the GlucoMen iCan, including samples, was refused by Respondent 1. In addition, it is doubtful that these products could have been obtained in Portugal as of the beginning of March 2025, as Respondents argue. It appears from the submitted invoice (Exhibit BB009) that Respondent 2 obtained samples of the product from a Portuguese wholesaler. This does not show that the product was already available at that time for the general public. This appears to be at odds with the fact that the user guide of the GlucoMen iCan only became available at the end of April 2025.

172. The Court of Appeal also notes in this respect that at this time, the patent was still in opposition. The OD had provided a negative preliminary opinion in December 2024 (Exhibit BB042) and an oral hearing was scheduled for 20 March 2025. It was not unreasonable for the patentee to wait with legal action until after the OD had rendered its decision and upheld the patent in amended form. The written decision of the OD was rendered on 24 April 2025 and this date coincided with the availability of the user guide and the launch of the products in different European markets.

173. In conclusion, the Court of Appeal is of the opinion that the Appellant acted with sufficient diligence after the launch of the product and receipt of the samples on 29 April 2025. Although a delay of eight weeks to start PI-proceedings is relatively long, the requirements of urgency have been fulfilled under the circumstances of this case.

Necessity of provisional measures and balance of interests

174. Under Art. 62 UPCA and R. 211.1 RoP, the Court may grant provisional measures intended to prevent any imminent infringement, and to prohibit, on a provisional basis and subject, where appropriate, to a recurring penalty payment, the continuation of the alleged infringement or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. Such provisional measures are treated by way of summary proceedings (R. 205 RoP). Compared to proceedings on the merits, these proceedings are short and fast and make it possible to bring a patent infringement to an immediate end. The expedited procedure, however, does not allow for full examination of the Applicant's entitlement to commence proceedings, of the validity of the patent and of the alleged infringement as provided for in proceedings on the merits. The expedited procedure can therefore be used only if, considering the nature of the case, proceedings on the merits cannot be awaited.

175. Pursuant to Art. 62(2) UPCA and R. 211.3 RoP, the Court shall have the discretion to weigh up the interests of the parties and, in particular, to take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction. The Court must in addition consider the time factor. More specifically, the Court must assess whether it is possible to await proceedings on the merits, or whether provisional measures are necessary (UPC_CoA_540/2024, 24 February 2025, Biolitec v Light Guide; UPC_CoA_768/2024, 20 April 2025, EOFlow v Insulet).

176. Accordingly, R. 206.2(c) RoP requires that the Applicant in its Application for provisional measures

sets out the reasons why provisional measures are necessary to prevent a threatened infringement, to forbid the continuation of an alleged infringement or to make such continuation subject to the lodging of guarantees. This is not only a formal requirement. It concerns the merits of the application for provisional measures and must be considered by the judge when issuing an order under R. 211 RoP (UPC_CoA_335/2023, 26 February 2026, NanoString v 10x; UPC_CoA_540/2024, 24 February 2025, Biolitec v Light Guide).

177. Provisional measures will be necessary, for instance, where any delay would cause irreparable harm to the patent holder. Irreparable harm is, however, not a necessary condition for the ordering of provisional measures (UPC_CoA_182/2024, 25 September 2024, Mammut v Ortovox; UPC_CoA_540/2024, 24 February 2025, Biolitec v Light Guide; UPC_CoA_768/2024, 20 April 2025, EOFlow v Insulet). The necessity of provisional measures may also follow from the fact that there is direct competition between the attacked embodiment and the product of the patent holder (UPC_CoA_540/2024, 24 February 2025, Biolitec v Light Guide). In those cases, granting provisional measures may be justified if they are necessary in order to maintain the status quo that existed immediately prior to the alleged infringement until the decision of the Court on the merits (UPC_CoA_182/2024, 25 September 2024, Mammut v Ortovox; UPC_CoA_540/2024, 24 February 2025, Biolitec v Light Guide). The necessity for provisional measures may arise in a move from a market situation where only one product is available to one where there are two such competing products. Such a move can be expected to lead not just to price pressure but to a permanent price erosion (UPC_CoA_523/2024, 3 March 2025, Sumi v Syngenta).

178. In a case, where the patented product was already marketed by the infringer before the grant of the patent, necessity may be denied because the requested provisional measures would change the status quo of the market established years before the grant of the patent (UPC_CoA_540/2024, 24 February 2025, Biolitec v Light Guide; UPC_CoA_768/2024, 20 April 2025, EOFlow v Insulet).

179. The Court of Appeal is convinced that the Appellant has an (urgent) interest that Respondents are injuncted from bringing the GlucoMen iCan on the market.

180. The parties are competitors in the field of CGM techniques. Appellant has been a developer, manufacturer and marketer of CGM devices since 2007. Its current series of devices is called FreeStyle Libre. Since 2014, these devices have comprised an applicator (i.e. an insertion device), an on-body unit consisting of an analyte sensor (for glucose) and sensor electronics as an integrated unit, and a display device (such as a reader or smartphone) with proprietary software. Appellant is the main supplier of CGM products in the Contracting Member States. In Europe, Appellant serves over 1.3 million patients with its FreeStyle Libre products and has a market share of approximately 80%.

181. Respondent 1 also manufactures CGM systems and is the largest manufacturer of glucose monitoring devices in Asia. Respondent 2 markets glucose self-testing systems for people with diabetes. In the course of 2025, Respondents entered the European market with the GlucoMen iCan, particularly aimed at the reimbursement market. The reimbursement market is by far the largest market for CGM devices. According to the parties, the cash pay segment is less than 5% of the total CGM market in each country. The remainder of the sales in this market are made in the reimbursement segment of the market. Appellant explained that it suffers harm in both segments of the CGM market.

182. According to Respondents, following the introduction of the GlucoMen iCan, the ‘base’ price of the GlucoMen iCan in the cash pay market was comparable to that of the Free Style Libre. Appellant referred, however, to promotions and discounts that undercut Appellant’s market price. If price cutting would subsist, this would lead to a negative price spiral which, especially in this type of market, is difficult to reverse. In addition, Appellant pointed out that sales of the GlucoMen iCan prior to a decision in the main proceedings has the potential of eroding Appellant’s market share (even if Respondent 2’s market share would be small in the beginning) and that this would help establish the GlucoMen iCan amongst opinion leaders and users. The Court of Appeal accepts that

as a result, the Appellant is likely to suffer damages caused by the continued presence of the GlucoMen iCan on the cash pay market.

183. In the absence of a preliminary injunction, there would also be a risk that Respondent 2 would extend its presence in the much larger reimbursement segment of the CGM market by participating in tender procedures, offering its product at lower prices, also resulting in price erosion. Since the contracts in the reimbursement market are entered into for a substantial period of time, typically two years, price recovery will be even more difficult than in the cash pay segment.

184. The Court of Appeal rejects Respondents' argument that there will be no price erosion in the reimbursement segment, in particular because there are already other competitors of Appellant active in the reimbursement segment. Although it is true that the insurers set the price, they do so, among other factors, also on the basis of prices offered in tender procedures. These prices may well be influenced by a new competitor, who may try to enter the lucrative reimbursement segment of the market by offering its (very similar) products at substantially lower prices.

185. The interests of Respondents to be able to enter and stay on the market during proceedings on the merits do not outweigh the interests of the Appellant by an immediate injunction. The main argument of Respondents is that they would suffer substantial damages (loss of guarantees and damages for non-performance of contracts) as a result of having to withdraw from negotiations and concluded contracts due to the preliminary injunction, and that Respondent 2 may be "blacklisted" in Italy as a result of such withdrawal. The Respondents have failed to provide any evidence about pending negotiations and concluded contracts to show that this harm is likely to occur, and if so, to what extent. In addition, Respondents have not shown that this harm would materialize or be expected in Contracting Member States outside Italy.

186. The Court of Appeal notes in this respect that this harm would even be larger when Respondent 2 would be allowed to continue its activities with the GlucoMen iCan in the reimbursement market pending the main proceedings. As stated above, the Court of Appeal considers it more likely than not that the patent will be held valid and infringed, and therefore the chance that the negative consequences mentioned by Respondent 2 would materialize to an even larger extent following an injunction in main proceedings, is far from hypothetical. This would not only harm the Appellant (and the Respondents themselves), but also the patients and doctors using the GlucoMen iCan.

187. Also, Respondents' other arguments do not outweigh its interests over those of the Appellant:

- Even if it would be correct that the Appellant does not (fully) apply the patented technology, this cannot justify the Respondents' continued infringement. With their GlucoMen iCan product, the Respondents directly compete with Appellant's own product. This causes potential harm, which the Appellant is entitled to prevent.

- The fact that the Appellant did not act against the Sinocare iCan i3, cannot take away Appellant's interest to act against the GlucoMen iCan. As stated above, the Glucomen iCan was intended to (also) be marketed in the European reimbursement market, which is far larger than the cash pay segment of the market on which the Sinocare iCan i3 is sold.

- Contrary to the statements of the Respondents, the patented technology does not protect only a marginal part of the GlucoMen iCan. As discussed above, the patent relates to a glucose monitoring system which covers all elements of the GlucoMen iCan, i.e. the Sensor Assembly, the On-Body Device and the iCan App. Moreover, this technology is responsible for the user-device interaction. That can hardly be considered as marginal.

- It appears from the statements of the Respondents that they will be able to come up with a design around. This seems to imply that a preliminary injunction would not prevent Respondents from marketing an alternative product. The fact that the design around would also impact the Sinocare iCan i3, is not relevant. It is Respondents' own business decision to offer one software

application for two products. Nothing prevents Respondents from only implementing the design around in the app for the GlucoMen iCan.

188. Finally, the damages of Respondents due to later market entry should the injunction be lifted in proceedings on the merits will be easier to quantify than Appellant's damages. The long-term effect of price erosion is difficult to quantify, also in view of its influence on the price of similar devices marketed by third parties and on the prices set by insurers.

IX. Provisional Measures

189. In view of the above, Appellant is entitled to provisional measures. The Court of Appeal notes the following with respect to the requested relief.

The preliminary injunction

190. The Appellant has requested a generally worded injunction.

191. First of all, the Respondents object against the scope of the requested injunction, because it would also cover other products than the GlucoMen iCan, in particular the Sinocare iCan i3.

192. At the oral hearing, the Appellant confirmed that the hardware (On-Body-Device and Sensor Assembly) of the Sinocare iCan i3 is not meant to be covered by the requested injunction. On the other hand, according to the Appellant, the offer and supply of the iCan App for use with the Sinocare iCan i3 should be covered by the injunction. The Court of Appeal rejects this. The Sinocare iCan i3 and its software application have been on the market in Europe since October 2023. Appellant has never acted against these products prior to the institution of these proceedings. Under these circumstances, the provisional measures cannot extend to the Sinocare iCan i3 and its software application. The offer and supply of the iCan App is therefore prohibited for use with the GlucoMen iCan, not for use with the Sinocare iCan i3.

193. The request by the Respondents to limit the wording of the preliminary injunction to the GlucoMen iCan is rejected. Absent specific circumstances, in case infringement is held to exist with respect to a particular embodiment, a generally worded injunction may be issued (UPC_CoA_382/2024, 14 February 2025, Abbott v Sibio and UPC_CoA_899/2025, 30 March 2026, Sinocare v Abbott). This is generally justified and has the benefit that if, for example, the infringing product is slightly changed without altering the technical features that are decisive for the technical teaching of the patent, or similar products would be introduced on the market under a different name, these products are covered by the issued injunction.

194. The Court of Appeal will limit the territorial scope of the preliminary injunction to the UPC territory with the exception of Romania.

195. At various places in the Application, the Appellant indicated that, besides the UPC territory, it also wished to obtain an injunction for Spain, Ireland, Switzerland and Norway. The requested relief in the Application was, however, specifically limited to the Contracting Member States of the UPC (cf. Application, Section 1 and page 2: "*The Court is requested to grant a preliminary injunction in the form set out in Section 1*."). The Respondents referred to this in their Objection and the LD The Hague specifically noted this in the Order (paragraphs 18) and only accepted jurisdiction for the UPC territory (paragraphs 25-26). Appellant did not respond to this in first instance or in the appeal. The Court of Appeal will therefore issue the relief only with respect to the UPC territory, except Romania.

196. Respondents argued in the Objection and the Statement of response that the injunction should not cover Romania, as Romania joined the UPC system after the registration of the unitary effect of the patent (Art. 18(2) of Regulation (EU) No 1257/2012). Appellant did not respond to this argument and did not substantiate that the patent is currently in force in Romania by separate designation. Given the specific defence raised on this point by the Respondents, it was up to the Appellant to show that the patent was in force in Romania. The Appellant failed to do so.

197. The Court of Appeal sees no reason to limit the preliminary injunction to the reimbursement market. The infringing activities of the Respondents also extend(ed) to the cash pay market and these activities should equally be terminated. The fact that this segment of the market is smaller than the reimbursement market is not relevant.

198. The Court of Appeal also rejects Respondents' request for a grace period of one month in view of the contemplated design around. The Application was filed in June 2025, which provided sufficient time to the Respondents to perform the necessary preparations for the launch of a potential design around (the details of which were not provided by the Respondents).

199. The Court of Appeal shall order that penalty payments shall be paid in case of any violation of the preliminary injunction (cf. R. 354.3 RoP). The Court of Appeal considers a penalty payment of up to EUR 10,000 for each violation of the order or alternatively, at Appellant's choice, a penalty sum of up to EUR 100,000 for each day, a part of a day counting as an entire day, that the order is violated, reasonable.

Other provisional measures

200. The Appellant requests the Court of Appeal to order the Respondents to provide certain distribution and sales information with respect to the GlucoMen iCan to the extent that this information was not already obtained pursuant to the order of the LD The Hague in the proceedings for provisional measures based on patent EP 4 344 633 (UPC_CFI_624,/2025) ("the EP633-Order").

201. Communication of information pursuant to Art. 67 UPCA may also be ordered in the framework of provisional measures, always provided there is an urgent interest, and such measures are proportionate (UPC_CoA_382/2024, 14 February 2025, Abbott v Sibio; UPC_CoA_ 768/2024, 30 April 2025, Insulet v EOFlow).

202. In the EP633-Order, the LD The Hague limited the requested information, in short, to information with respect to the origin and distribution channels of the GlucoMen iCan. The Court of Appeal sees no reason to order the provision of any further information. In particular, the Appellant has not sufficiently indicated why it has an urgent interest to obtain the requested information in relation to the price obtained for the GlucoMen iCan in the Contracting Member States. This information is primarily relevant in relation to the calculation of damages. Appellant has not substantiated that this information is relevant prior to a decision on the merits being rendered. This request shall therefore be denied.

203. The requested delivery up (R. 212.1 (b) RoP) shall also be denied. The delivery up of the GlucoMen iCan was ordered in the EP633-Order, which Order was upheld by the Court of Appeal on 30 March 2026 (UPC_CoA_899/2025). The Court of Appeal understands that this part of the EP633-Order was enforced by the Appellant. The Appellant has not substantiated that in addition to the GlucoMen iCan products that have already been provided by the Respondents to the bailiff, there are any other GlucoMen iCan products that should be delivered to the bailiff.

204. Since this order ends the action, the Court of Appeal shall render a cost decision pursuant to Art. 69 UPCA. Respondents are the unsuccessful party and shall be ordered to pay the costs of the proceedings at first instance and on appeal.

205. In addition, Respondents shall be ordered to pay an amount of EUR 11,000 as an interim award of costs pursuant R. 211.1(d) RoP (cf. UPC_CoA_317/2025, 28 November 2025, Barco v Yealink).

206. The Appellant has not substantiated why Respondents should be ordered to jointly and severally pay the penalty sums and the legal costs. This part of the request will therefore be denied.

Security for enforcement

207. Respondents' request for a security for enforcement pursuant to Art. 82(2) UPCA and R. 352 RoP,

shall be rejected. It has not been substantiated why serious difficulties would be expected in connection with the recovery of any possible damages from Appellant, which is a US based listed company with several subsidiaries in Europe (cf. UPC_CoA_365/2025, 21 May 2025, Knaus v Yellow). There is therefore insufficient ground for such an order.

X. Cross-appeal

208. Pursuant to R. 220.1 RoP, only a party adversely affected by a decision may lodge an appeal. The same applies to a cross-appeal pursuant to R. 237 RoP. A cross-appeal is inadmissible if the only purpose of the cross-appeal is to change (a certain part of) the reasoning of the Court in First Instance, which in its result is in favour of the party filing the cross-appeal.

209. That is the case here. In accordance with the Respondents' request in first instance, the LD The Hague dismissed the claims of the Appellant. Appellant filed an appeal against this decision. The assessment whether the requirements of urgency have been fulfilled is a necessary part of this appeal (R. 211.4 RoP). This same issue cannot form the subject of the cross-appeal. The cross-appeal should therefore be declared inadmissible and the Respondents shall bear the costs of the cross-appeal.

ORDER

The Court of Appeal:

1. sets aside the Order of the Local Division The Hague;
2. orders Respondents to refrain from indirectly infringing claims 1 and 14 of the patent at issue (EP 3 988 471 B2) in the Contracting Member States of the UPC with the exception of Romania;
3. orders Respondents to comply with the order under (2) above, subject to a penalty payment of up to EUR 10,000.00 for each violation of, or non-compliance with, the order, or alternatively, at Appellant's choice, up to EUR 100,000.00 for each day, or part of a day counting as an entire day, that the violation or non-compliance continues;
4. orders Respondents to repay to Appellant all costs that were paid by Appellant to the Respondents pursuant to the Order of the Local Division The Hague;
5. orders Respondents to pay to Appellant an amount of EUR 11,000.00 as an interim award of costs in the appeal proceedings;
6. orders Respondents to bear the costs and other expenses incurred by Appellant in the proceedings at first instance and on appeal, including the cross-appeal;
7. specifies the date as referred to in R. 213 RoP at 30 calendar days after service of this order;
8. declares the Respondents inadmissible in the cross-appeal;
9. declares this order to be immediately enforceable;
10. rejects any further requests made by Appellant and Respondents.

This order was issued on 17 April 2026.

Bartholomeus Johannes van den Broek

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Bart van den Broek on behalf of Ulrike Voß, presiding judge

Bartholomeus Johannes van den Broek

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Bart van den Broek, legally qualified judge and judge-rapporteur

Nathalie, Jeanne, Danielle SABOTIER

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Nathalie Sabotier, legally qualified judge

Dorothea Hofer

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Dorothea Hofer, technically qualified judge

Gérard, Jean-Pierre Myon

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Gérard Myon, technically qualified judge