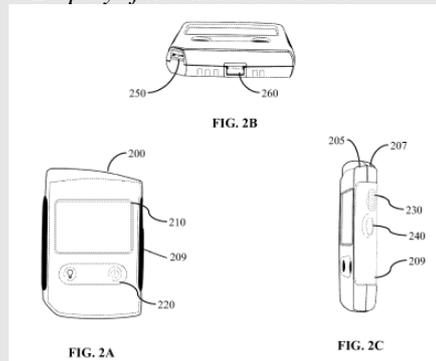


UPC CFI, Local Division The Hague, 17 September 2024, Abbott v Dexcom-I

*Displays for a medical device*



## PATENT LAW – PROCEDURAL LAW

Leave to amend counter claim for revocation and response to amended claim allowed ([R. 263 RoP](#))

- [At the time of the Statement of defence including a counter claim Abbott’s withdrawal of the claims against the G7-System with G7-Receiver could not yet be envisaged](#)

Source: [Unified Patent Court Identical order of same date](#)

UPC Court of First Instance,  
Local Division The Hague, 17 September 2024  
(Brinkman)

UPC\_CFI\_425/2023

### Procedural Order

of the Court of First Instance of the Unified Patent Court delivered on 17/09/2024

Date of receipt of Statement of claim: Not provided

**Dexcom Inc.** (Defendant) - 6340 Sequence Drive - CA 92121-4356 - San Diego - US

Statement of claim served on 30/11/2023

**Dexcom International Limited** (Defendant) - 1 Lampousas Street - 1095 - Nicosia - CY

Statement of claim served on 20/12/2023

REFERENCE CODE ECLI: Not provided

### CLAIMANT/S

1) **Dexcom International Limited** (Claimant) - 1 Lampousas Street - 1095 - Nicosia - CY

Represented by Tjibbe Douma

### DEFENDANT/S

1) **Abbott Diabetes Care Inc.** (Defendant) - 1360 South Loop Road - CA 94502 - Alameda - US

Represented by Eelco Bergsma

2) **Abbott Diabetes Care Inc. (Defendant)** - 1360 South Loop Road - 94502 California - Alameda - US

Represented by Eelco Bergsma

### PATENT AT ISSUE

Patent no. Proprietor/s

[EP4070727](#) Abbott Diabetes Care Inc

[...]

### DECIDING JUDGE

Judge-rapporteur: Edger Brinkman

LANGUAGE OF PROCEEDINGS: English

### SUBJECT-MATTER OF THE PROCEEDINGS

Counter claim for revocation – amendment of counter claim

### ORDER SOUGHT AND DEFENCE

Claimants in the counter claim, defendants in the main infringement claim (hereinafter Dexcom) have requested the court for leave to amend their counter claim as follows:

“III. declare that the Dexcom G7-System used with the G7-Receiver falls outside the scope of protection of EP 4 070 727 B1, and/or that making, offering, placing on the market or using the G7-System used with the G7-Receiver, or importing or storing these products for those purposes does not constitute infringement of EP 4 070 727 B1.”

Dexcom points to the withdrawal of part of the infringement claim by defendants in the counter claim, claimants in the main infringement proceedings (hereinafter Abbott), namely that the G7-System with a G7-Receiver infringes the patent. Abbott maintain the infringement claim against the G7-System with the G7-App. With a claim for a declaration of non-infringement of the G7-System used with a G7-Receiver, Dexcom wishes to obtain legal certainty.

Abbott opposes the requested amendment as it considers it does not meet the requirements of [R. 263.2 RoP](#).

### GROUND FOR THE ORDER

The JR agrees with Dexcom that they could not reasonably have filed the amendment at an earlier stage. Dexcom indicated their intention to amend the counter claim in their reply to the defence in the counter claim, which is their first written filing (stage) after Abbott indicated their withdrawal of the claims against the G7-System with G7-Receiver. In as far as Abbott contend that this claim could and should have been filed with the Statement of Defence including a counter claim, this is rejected. As Dexcom argue, at the time they could not yet envisage Abbott’s withdrawal. The JR fails to see a valid reason in the mere possibility of such withdrawal that Dexcom should have reasonably anticipated it. After all, the statement of claim in the infringement proceedings clearly indicated otherwise. Subsection B of the statement of claim deals with the alleged infringement regarding the G7-Receiver, while subsection A regards the G7-App. Whether Dexcom have a proper legal interest in this declaration of non-infringement, as Dexcom allege but Abbott contest, is a matter for the panel to decide.

While it may be true that meanwhile Abbott filed its rejoinder in the counter claim (on 22 August 2024), this does not mean Abbott are unreasonably hindered in their defence to it. As will be stipulated below, they can file a separate submission on the amended claim, equally within one month after today (30 days).

### ORDER

Leave to amend the claim is granted. Abbott may respond within 30 days to the amended claim.

ORDER DETAILS Order no. ORD\_52140/2024 in ACTION NUMBER: CC\_13898/202423

UPC number: Not provided

Action type: Infringement Action / Counter Claim

Related proceeding no. ACT\_586899/202

[...]

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