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571-272-7822

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DEXCOM, INC.  
Petitioner,

v.

WAVEFORM TECHNOLOGIES, INC.  
Patent Owner

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IPR2016-01679  
Patent 7,146,202

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Before BRIAN P. MURPHY, JON B. TORNQUIST, and  
ELIZABETH M. ROESEL, *Administrative Patent Judges*

**PATENT OWNER'S OBJECTIONS UNDER  
37 C.F.R. § 42.64(b)(1) TO EVIDENCE SERVED**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner WaveForm Technologies, Inc. files these objections to evidence served by Petitioner Dexcom, Inc. on August 17, 2017 in support of its Reply in this *inter partes* review. This notice is being timely filed within 5 business days of service of the evidence.

**I. Exhibits 1014, 1015, 1016, and 1017**

In its decision to institute this IPR, the Board expressly excluded these four exhibits from consideration pursuant to 37 C.F.R. § 42.104(b). *See* Paper 10 at 18 n. 11. Patent Owner relied on that exclusion in its Patent Owner Response by not addressing argument relating to the excluded references. *See id.* at 29 (“[T]he *inter partes* review is limited to the grounds of unpatentability listed above, and no other grounds of unpatentability are authorized for *inter partes* review”). Patent Owner therefore objects to these exhibits under 37 C.F.R. § 42.23, the Administrative Procedures Act (5 U.S.C. §§ 551 *et seq.*), and the Due Process Clause (*see* U.S. Const. am. 5).

**II. Exhibits 1018 and 1019**

These exhibits go to the same argument for which excluded Exhibits 1014-1017 were offered. Petitioner failed to support the argument with admissible evidence in its Petition, and Patent Owner relied on the exclusion of that evidence in its Response. Petitioner should not be permitted to add new evidence in its

Reply relating to the previously unsupported argument. Accordingly, these exhibits are submitted in violation of 37 C.F.R. § 42.23(b) and Patent Owner objects to them under 37 C.F.R. § 42.23, the Administrative Procedures Act (5 U.S.C. §§ 551 *et seq.*), and the Due Process Clause (*see* U.S. Const. am. 5).

### III. Exhibit 1021

Petitioner submitted this exhibit to support an argument raised for the first time on Reply, which is directly contrary to multiple clear admissions made in the Petition. Specifically, Petitioner unambiguously admitted in its Petition that the '202 sensor is a "wire." Patent Owner relied on those admissions in its Patent Owner Response, and has had no fair opportunity to address or respond to new arguments presented in the Reply that are contrary to those admissions. Patent Owner therefore objects to this exhibit under 37 C.F.R. § 42.23, the Administrative Procedures Act (5 U.S.C. §§ 551 *et seq.*), and the Due Process Clause (*see* U.S. Const. am. 5).

Respectfully submitted,  
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: August 24, 2017

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## **CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 24<sup>th</sup> day of August, 2017, a complete and entire copy of these **PATENT OWNER'S OBJECTIONS UNDER 37 C.F.R. § 42.64(b)(1) TO EVIDENCE SERVED** was provided via electronic mail to the Petitioner's known representatives at the e-mail addresses noted below:

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