

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABBOTT DIABETES CARE, INC., a Delaware corporation, )  
)  
)  
)

Plaintiff, )

v. )

DEXCOM, INC., a Delaware corporation, )

Defendant. )  
)  
\_\_\_\_\_ )

C.A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Abbott Diabetes Care, Inc. (“Abbott”), by and through its undersigned attorneys, alleges as follows:

**Nature of Action**

1. This is an action for patent infringement involving United States Patent Nos. 5,899,855 (the “855 patent”), 6,134,461 (the “461 patent”), and 6,990,366 (the “366 patent”) (collectively referred to as “Abbott patents”), which relate to glucose monitoring devices, systems, and methods.

**Jurisdiction and Venue**

- 2. Jurisdiction for this action is based on 28 U.S.C. §§ 1331 and 1338(a).
- 3. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).
- 4. This Court has personal jurisdiction over the Defendant because, among other things, it is organized under the laws of Delaware.

**Parties**

5. Abbott is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in Alameda, California.

6. DexCom, Inc. (“DexCom”) is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in San Diego, California.

**Background**

7. Abbott is the owner, assignee or exclusive licensee of the three patents listed in paragraph 1, which cover medical devices, systems, and methods for monitoring glucose levels in humans.

8. On May 4, 1999, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ‘855 patent, which is entitled “Modular Microprocessor-Based Health Monitoring System.” Abbott is the exclusive licensee of the ‘855 patent and accordingly has the right to sue for infringement. A true and correct copy of the ‘855 patent is attached hereto as Exhibit A.

9. On October 17, 2000, the USPTO duly and legally issued the ‘461 patent, which is entitled “Electrochemical Analyte.” Abbott is the assignee and owner of the ‘461 patent and accordingly has the right to sue for infringement. A true and correct copy of the ‘461 patent is attached hereto as Exhibit B.

10. On January 24, 2006, the USPTO duly and legally issued the ‘366 patent, which is entitled “Analyte Monitoring Device and Methods of Use.” Abbott is the assignee and owner of the ‘366 patent and accordingly has the right to sue for infringement. A true and correct copy of the ‘366 patent is attached hereto as Exhibit C.

11. On March 27, 2006, DexCom received FDA approval to market its STS™ Continuous Glucose Monitoring System. DexCom has made, used, offered for sale and sold its STS device in the United States continuously since that date.

12. DexCom has been aware of the Abbott patents for a long time and, despite that fact, has continued to develop its product, has continued to promote its product, and has commercially launched its product.

13. Prior to launching its product, DexCom attended at least two trade shows where it publicized and displayed its product. Upon information and belief, the products DexCom displayed at the trade shows were manufactured for the purpose of showcasing at the trade shows rather than for the purpose of gathering information for submission to the FDA.

**COUNT I**  
**Patent Infringement -- The '855 Patent**

14. Abbott re-alleges and incorporates herein the allegations of paragraphs 1 through 13.

15. DexCom has, in violation of 35 U.S.C. § 271(a), directly infringed the '855 patent by making, using, offering to sell and selling its STS™ Continuous Glucose Monitoring System in the United States.

16. DexCom has, in violation of 35 U.S.C. § 271(b), actively and knowingly induced and is actively and knowingly inducing the direct infringement of the '855 patent by intentionally aiding and abetting third parties' use, offer for sale and/or sale of the invention of the '855 patent through its advertising, marketing, sales, distribution, and dissemination of information concerning DexCom's STS™ Continuous Glucose Monitoring System.

17. Upon information and belief, DexCom had and has actual knowledge of the '855 patent, and DexCom has infringed and is infringing this patent with knowledge of Abbott's rights and without a reasonable basis for believing that DexCom's conduct is lawful.

18. Upon information and belief, DexCom's actions have been willful and deliberate.

**COUNT II**  
**Patent Infringement -- The '461 Patent**

19. Abbott re-alleges and incorporates herein the allegations of paragraphs 1 through 13.

20. DexCom has, in violation of 35 U.S.C. § 271(a), directly infringed the '461 patent by making, using, offering to sell and selling its STS™ Continuous Glucose Monitoring System in the United States.

21. DexCom has, in violation of 35 U.S.C. § 271(b), actively and knowingly induced and is actively and knowingly inducing the direct infringement of the '461 patent by intentionally aiding and abetting third parties' use, offer for sale and/or sale of the invention of the '461 patent through its advertising, marketing, sales, distribution, and dissemination of information concerning DexCom's STS™ Continuous Glucose Monitoring System.

22. Upon information and belief, DexCom had and has actual knowledge of the '461 patent, and DexCom has infringed and is infringing this patent with knowledge of Abbott's rights and without a reasonable basis for believing that DexCom's conduct is lawful.

23. Upon information and belief, DexCom's actions have been willful and deliberate.

**COUNT III**  
**Patent Infringement -- The '366 Patent**

24. Abbott re-alleges and incorporates herein the allegations of paragraphs 1 through 13.

25. DexCom has, in violation of 35 U.S.C. § 271(a), directly infringed the '366 patent by making, using, offering to sell and selling its STS™ Continuous Glucose Monitoring System in the United States.

26. DexCom has, in violation of 35 U.S.C. § 271(b), actively and knowingly induced and is actively and knowingly inducing the direct infringement of the '366 patent by intentionally aiding and abetting third parties' use, offer for sale and/or sale of the invention of the '366 patent through their advertising, marketing, sales, distribution, and dissemination of information concerning DexCom's STS™ Continuous Glucose Monitoring System.

27. Upon information and belief, DexCom had and has actual knowledge of the '366 patent, and DexCom has infringed and is infringing this patent with knowledge of Abbott's rights and without a reasonable basis for believing that DexCom's conduct is lawful.

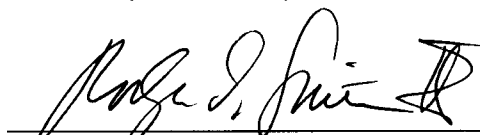
28. Upon information and belief, DexCom's actions have been willful and deliberate.

WHEREFORE, Abbott prays that the Court grant the following relief against DexCom and in favor of Abbott:

- A. Judgment that DexCom's product infringes one or more claims of the Abbott patents, directly and by way of inducing infringement;
- B. An award of damages and an accounting for DexCom's infringement of the Abbott patents, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. § 284;

- C. Judgment that DexCom's infringement has been willful and an award of treble damages;
- D. Judgment that the case is exceptional and an award of reasonable attorneys' fees under 35 U.S.C. § 285;
- E. Injunctive relief against DexCom's infringement of the Abbott patents; and
- F. Such other relief as the Court determines to be just and proper.

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