



## Paris Local Division

UPC\_CFI\_230/2023  
Procedural Order (Review R.333)  
of the Court of First Instance of the Unified Patent Court  
delivered on 30/01/2024

### APPLICANTS

- 1) Abbott NV / SA  
(Applicant) - Avenue Einstein 14 - B1300 -  
Wavre - BE
  
- 2) Abbott GmbH  
(Applicant) - Max-Planck-Ring 2 - 65205 -  
Wiesbaden - DE
  
- 3) Abbott Laboratories  
(Applicant) - 100 Abbott Park Road - 60064 -  
Abbott Park, IL - US
  
- 4) Abbott S.r.l.  
(Applicant) - Viale Giorgio Ribotta 9 - 00144 -  
Rome - IT
  
- 5) Abbott Scandinavia Aktiebolag  
(Applicant) - Hemvärnsgatan 9 - 17129 - Solna -  
SE

- 6) Abbott B.V.  
(Applicant) - Postbus 727 - 2130AS - Hoofddorp  
- NL
  
- 7) Abbott France  
(Applicant) - c/o Abbott France, 40/48 rue  
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- 8) Abbott Logistics B.V.  
(Applicant) - Postbus 365 - 8000AJ - Zwolle - NL
  
- 9) Abbott Diagnostics GmbH  
(Applicant) - Max-Planck-Ring 2 - 65205 -  
Wiesbaden - DE
  
- 0) Abbott Diabetes Care Inc.  
(Applicant) - 1360 South Loop Road - 94502 -  
Alameda, CA - US

#### RESPONDENT

- 1) DexCom, Inc.  
6340 Sequoia Drive - 92121 - San Diego,  
CA - US

## PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor</i>
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EP3435866	DexCom, Inc.
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## DECIDING JUDGE

### FULL PANEL

Presiding judge and Judge-rapporteur	Camille Lignieres
Legally qualified judge	Carine Gillet
Legally qualified judge	Rute Lopes
Technically qualified judge	Alain Dumont

LANGUAGE OF PROCEEDINGS: English

POINTS AT ISSUE: *Review by the panel pursuant to R. 333 RoP*

### ORDER

#### Summary of procedure and facts

On 13 and 14 November 2023, Abbott (hereinafter the "Applicant", Defendant in the main proceedings) lodged on behalf of all the defendants a confidentiality Application under R. 262A and R. 262.2 RoP related to some information mentioned in their Statement of Defence (hereinafter "SoD") dated 14 November 2023 in the infringement main proceedings (ACT\_546446/2023) initiated by DexCom (hereinafter the "Respondent", Claimant in the main proceedings).

An order was issued by the judge rapporteur on 19 December 2023 setting the modalities of the confidentiality club and in particular (point 6 of the order) the maximum amount of the fine in the event of a breach.

On 31 December 2023, the UPC Munich Local Division issued a confidentiality order in parallel proceedings between the same parties setting a fine in case of breach for an amount of up to 250.000 euros.

Abbott entities lodged on 3 January 2024 an application for a review by the panel pursuant to Rule 333 RoP regarding exclusively point 6 of said confidentiality order.

## Parties' arguments

The Applicant objected to point 6 of the contested Order on the grounds that a similar order has been issued by the Judge-Rapporteur of the Munich Local Division in parallel proceedings, but with a discrepancy (although the confidential information protected was the same in both the Paris and Munich proceedings) between the order ruled by the Paris Local Division and the Munich Local Division order. The applicants requested that consistency be achieved between these two orders in the sense that the fine limit should be increased from EUR 50,000 to EUR 250,000.

The Applicant argued that this harmonisation should be made with the higher amount (the one of Munich's order) since in case of a major breach exceeding the value of 50.000 Euros, the 250.000 Euro threshold gives the court more flexibility and the Applicants/Appellants a more reliable guarantee of compliance with the confidentiality club. They argued that Dexcom Inc. is a major international company with significant financial resources such that the increase of the upper limit of the fee should not be an issue.

In response, Dexcom seeks the application for review to be dismissed, arguing that:

-the amount of 250.000 Euros is disproportionate, taking into account that the fine would have to be paid by individuals and not by the parties in case of a breach, and further given the fact that a large part of the called "confidential information" has already been made accessible without any confidentiality restriction by the third applicant.

-the judge-rapporteur is free to set the fine that he/she deems appropriate and is not bound by other LD of the UPC.

The respondent adds that there is a potential risk of paying a double fine. Consequently, Dexcom proposes that if the court's panel decides to review point 6 of the confidentiality orders, the following amendment be made: "[i]n the event of a breach of the above orders, the Court may, upon request of the Applicants, impose a fine of up to € 50.000 for each single case of a breach, unless a fine has already been imposed in accordance with the order of 31 December 2023 taken by the Munich Local Division of the UPC pursuant to R. 262A RoP in the proceedings UPC CFI 233/2023."

## Grounds

### -Concerning the need to harmonise the two similar orders:

The Court notes that, although the UPC Paris LD order of 19 November 2023 and the UPC Munich LD order of 31 December 2023 relate to the same protected confidential information, the two orders were ruled by two divisions in two different proceedings concerning different patents. In such circumstances, one division is not bound by a decision in another division despite belonging to the same unified court.

Therefore, the alleged need to harmonise the amount of the fine as requested by the Applicant is not justified.

### -Concerning the appropriate maximum amount of the fine:

In principle, the judge rapporteur has to set an appropriate fine limit that is proportionate and sufficiently dissuasive to ensure that the parties comply with his/her decision.

In the contested order, the judge rapporteur considered the amount of the fine requested in the event of a breach of the confidentiality arrangements, i.e. up to EUR 250 000 for each individual case of breach, to be disproportionate, given that a significant part of the information had already been disclosed in the previous national proceedings in Germany.

The Court notes that the Judge-Rapporteur was justified in considering that part of the confidential information had already been disclosed without a confidentiality restriction and that a lower amount of the fine would sufficiently protect the legitimate interests of the parties in the event of a breach.

Therefore, a maximum fine amount of EUR 50,000 in case of breach is appropriate and proportionate in the contested confidentiality order and there is no need to set a higher maximum amount for the fine.

-Concerning the Dexcom's amendment:

In order to avoid the potential risk of a double fine, Dexcom requests a specific mention in the revised order as follows: "In the event of a breach of the above orders, the Court may, upon request of the Applicants, impose a fine of up to € 50.000 for each single case of a breach, unless a fine has already been imposed in accordance with the order of 31 December 2023 taken by the Munich Local Division of the UPC pursuant to R. 262A RoP in the proceedings UPC CFI 233/2023".

However, it will be at the Court's discretion, at the time of any breach, to decide on the appropriate amount of a fine to be paid, taking into account all elements *in concreto*, including any previous fine decided by the UPC Munich Local Division for the same breach.

There is no grounds to bind the Paris Local Division, in case of breach and as requested by Dexcom, in cases where the Munich Local Division has already imposed a fine.

Therefore, a need for such an amendment of the confidentiality order is not justified.

FOR ALL THESE REASONS,

THE COURT OF FIRST INSTANCE – PARIS LOCAL DIVISION

Orders that:

-the request to review the Confidentiality order (point 6) of 19 November 2023 is dismissed.

Delivered in Paris, on 30 January 2024.

Camille Lignières, Presiding judge and judge rapporteur

Carine Gillet, Legally qualified judge

Rute Lopes, Legally qualified judge

Alain Dumont, Technically qualified judge

INFORMATION ABOUT APPEAL

The present Order may be appealable according to R. 220.2 RoP.

ORDER DETAILS

Procedural Order in ACTION NUMBER: ACT\_546446/2023

UPC number: UPC\_CFI\_230/2023

Action type: Infringement Action

Related proceeding: Application No. 253/2024

Application Type: Review R.333 Application