

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALIGN TECHNOLOGY, INC.,

Petitioner,

v.

DENTAL MONITORING SAS,

Patent Owner.

Case No. IPR2023-01369

U.S. Patent No. 10,755,409

PATENT OWNER'S SECOND OBJECTIONS TO EVIDENCE

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Dental Monitoring SAS (“Dental Monitoring”) submits the following objections to exhibits filed by Petitioner Align Technology, Inc. (“Align”) in its Petitioner’s Reply to Patent Owner’s Response. These objections are being timely filed within five business days of the August 20, 2024, service of the evidence to which the objection is directed.

Exhibit No.	Objection(s)
1030	Align identifies this exhibit as “Declaration of Nathaniel E. Frank-Wright.” Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Improperly Filed under 37 C.F.R. 42.64(b)(2): The declaration addresses EX1024, which Align filed with its Petition on August 31, 2023. The declaration was signed that same day on August 31, 2023, but Align did not submit this declaration with its Petition. On April 2, 2024, Align served this declaration as EX1030 in response to Dental Monitoring’s objections to pre-institution evidence. Align has now filed the same exhibit with its Reply. 37 C.F.R. 42.64(b)(2) does not authorize Align to file evidence in response to Dental Monitoring’s objections, as the Board’s Trial Practice Guide makes clear. PTAB Consolidated Trial Practice Guide November 2019, 78-79 (“Supplemental evidence ... is filed only in support of an opposition to a motion to exclude.”). Align’s filing of supplemental evidence with its Reply is improper. <i>See Toshiba Corp. v. Optical Devices, LLC</i>, IPR2014-01446, Paper 31 at 30-34 (P.T.A.B. March 9, 2016). Untimely and Improper under 37 C.F.R. § 42.123(b): Align did not seek leave to file this exhibit as supplemental information in further support of its Petition, the time for which application expired on April 5, 2024. <i>See</i> 37 C.F.R. § 42.123(a)(1). Align’s filing of supplemental

	information with its Reply is both improper and untimely. <i>See Toshiba Corp. v. Optical Devices, LLC</i>, IPR2014-01446, Paper 31 at 30-34 (P.T.A.B. March 9, 2016). FRE¹ 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. The declarant's statements are likewise inadmissible hearsay pending confirmation that he will be made available for cross-examination in a manner complying with the rules governing this proceeding. FRE 402/403: The declaration and the exhibit thereto are irrelevant, including because they do not concern the merits of the instituted grounds, are only referenced through the inadmissible testimony of Dr. Foroosh, and are not probative of whether EX1007 is prior art. <i>See</i> Paper 2 at 10-11; EX1002 ¶67. FRE 901: Align has not produced evidence sufficient to establish that the exhibit to this declaration is what Align claims it is, including specifically in connection with Align's claims regarding the URLs of hyperlinks allegedly available on a prior date in the website reflected in the exhibit. <i>E.g.</i>², Paper 2 at 10-11; Paper 23 at 6; EX1002 ¶67. Align has thus not authenticated this exhibit.
1031	Align identifies this exhibit as "Second Declaration of Nathaniel E. Frank-Wright." Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Untimely and Improperly Filed under 37 C.F.R. 42.64(b)(2): The declaration addresses EX1026, EX1025, EX1023, and EX1022, which Align filed with its Petition on August 31, 2023. On March 19, 2024, Dental Monitoring objected to the authenticity of those exhibits. Paper

¹ Federal Rules of Evidence.

² Dental Monitoring cites select examples here and throughout without limitation as to the scope of the objections of which the citations are exemplary.

12 at 13-17. Align did not serve supplemental evidence addressing Dental Monitoring's objections but now files this declaration with its Reply. The time to serve supplemental evidence expired on April 2, 2024, and, regardless, 37 C.F.R. 42.64(b)(2) does not authorize Align to file evidence in response to Dental Monitoring's objections, as the Board's Trial Practice Guide makes clear. PTAB Consolidated Trial Practice Guide November 2019, 78-79 ("Supplemental evidence ... is filed only in support of an opposition to a motion to exclude."). Align's filing of supplemental evidence with its Reply is improper. *See Toshiba Corp. v. Optical Devices, LLC*, IPR2014-01446, Paper 31 at 30-34 (P.T.A.B. March 9, 2016).

Untimely and Improper under 37 C.F.R. § 42.123(b): Align did not seek leave to file this exhibit as supplemental information in further support of its Petition, the time for which application expired on April 5, 2024. *See* 37 C.F.R. § 42.123(a)(1). Align's filing of supplemental information with its Reply is both improper and untimely. *See Toshiba Corp. v. Optical Devices, LLC*, IPR2014-01446, Paper 31 at 30-34 (P.T.A.B. March 9, 2016).

FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. The declarant's statements are likewise inadmissible hearsay pending confirmation that he will be made available for cross-examination in a manner complying with the rules governing this proceeding.

FRE 402/403: The declaration and the exhibits thereto are irrelevant, including because they do not concern the merits of the instituted grounds, are only referenced through the inadmissible testimony of Dr. Foroosh, and are not probative of whether EX1007 is prior art. *See* Paper 2 at 10-11; EX1002 ¶¶64-67.

FRE 901: Align has not produced evidence sufficient to establish that the exhibits to this declaration are what Align claims they are, including

	specifically in connection with Align’s claims regarding the URLs of hyperlinks allegedly available on a prior date in the websites reflected in the exhibits. <i>E.g.</i>, Paper 2 at 10-11; Paper 23 at 6; EX1002 ¶67. Align has thus not authenticated this exhibit.
1033	Align identifies this exhibit as “Rajkomar et al., “High-Throughput Classification of Radiographs Using Deep Convolutional Neural Networks,” J. Digital Imaging, 30, 95-101 (Feb. 2017).” Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35.
1035	Align identifies this exhibit as “Declaration of Dr. Maureen Valley.” Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is a belated offering of expert testimony addressing Align’s prima facie case and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice

	Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). Specifically, Align failed to provide with its Petition any testimony reflecting the perspective of a complete POSA, which the parties do not dispute includes a person with a background in dentistry and/or orthodontics. Align’s submission of such testimony now is improper. FRE1 801/802: Each statement in this exhibit is inadmissible hearsay not subject to any exception, pending confirmation that Dr. Valley will be made available for cross-examination in a manner complying with all rules governing this proceeding. FRE 701/702: Dr. Valley lacks the expertise to opine from the perspective of a POSA as defined by either party. To the extent that the testimony in this exhibit purports to provide the perspective of a POSA, that testimony is not admissible. FRE 402/403/701/702: Dr. Valley’s testimony is likewise inadmissible as ipse dixit, including because she has not cited any evidence to support her conclusions. Paragraphs 18-21 and 39 are not cited or relied on in Align’s Reply and are thus irrelevant. The remainder of Dr. Valley’s testimony is likewise irrelevant because it is cited without meaningful discussion in Align’s Reply. To the extent Align seeks to rely on this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35.
1036	Align identifies this exhibit as “Curriculum Vitae of Maureen Valley, D.M.D., M.P.H., M.S.” Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is a belated offering of expert testimony addressing Align’s prima facie case and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). Specifically,

	Align failed to provide with its Petition any testimony reflecting the perspective of a complete POSA, which the parties do not dispute includes a person with a background in dentistry and/or orthodontics. Align’s submission of such testimony now is improper. FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope.
1037	Align identifies this exhibit as “Deposition Transcript of Dr. John Mongan (July 23, 2024).” Paper 23 at 30. Dental Monitoring preserves the objections it raised to the testimony and exhibits therein during the deposition.
1038	Align identifies this exhibit as “Deposition Transcript of Dr. Budi Kusnoto (Aug. 9, 2024).” Paper 23 at 30. Dental Monitoring preserves the objections it raised to the testimony and exhibits therein during the deposition.
1039	Align identifies this exhibit as “Liu et al., “Sparse Convolutional Neural Networks,” 2015 IEEE Conference on Computer Vision and Pattern Recognition (CVPR) (2015).” Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are

	inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s petition nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding.
1040	Align identifies this exhibit as “Wu et al., “Quantized Convolutional Neural Networks for Mobile Devices,” arXiv.org (https://arxiv.org/pdf/1512.06473v3) (May 16, 2016).” Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35.

	FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1040 does not on its face identify a publication method, date, or format, nor has any competent testimony been offered as to its nature.
1041	Align identifies this exhibit as “Howard et al., “MobileNets: Efficient Convolutional Neural Networks for Mobile Vision Applications,” arXiv.org (https://arxiv.org/pdf/1704.04861v1) (Apr. 17, 2017).” Paper 23 at 30. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35. FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent

	Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1041 does not on its face identify a publication method, date, or format, nor has any competent testimony been offered as to its nature.
1042	Align identifies this exhibit as “Ross Girshick, “Fast R-CNN,” arXiv.org (https://arxiv.org/pdf/1504.08083v2) (Sep. 27, 2015).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35. FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1042 does not on its face identify a publication method,

	date, or format, nor has any competent testimony been offered as to its nature.
1043	Align identifies this exhibit as “Dong-Hyun Lee, “Pseudo-Label: The Simple and Efficient Semi-Supervised Learning Method for Deep Neural Networks,” ResearchGate (https://www.researchgate.net/profile/Dong-Hyun-Lee/publication/280581078_Pseudo-Label_The_Simple_and_Efficient_Semi-Supervised_Learning_Method_for_Deep_Neural_Networks/links/55bc4ada08ae092e9660b776/Pseudo-Label-The-Simple-and-Efficient-Semi-Supervised-Learning-Method-for-Deep-Neural-Networks.pdf) (Aug. 1, 2015).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35.

	FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1043 does not on its face identify a publication method, date, or format, nor has any competent testimony been offered as to its nature.
1044	Align identifies this exhibit as “Patrini et al., “Making Deep Neural Networks Robust to Label Noise: a Loss Correction Approach,” arXiv.org (https://arxiv.org/pdf/1609.03683v2) (Mar. 22, 2017).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35. FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent

	Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1044 does not on its face identify a publication method, date, or format, nor has any competent testimony been offered as to its nature.
1045	Align identifies this exhibit as ““Apple Presents iPhone 4,” https://www.apple.com/newsroom/2010/06/07Apple-Presents-iPhone-4/ (as archived May 25, 2017, at http://web.archive.org/web/20170525092213/https://www.apple.com/newsroom/2010/06/07Apple-Presents-iPhone-4/).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in any declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35. FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent

	Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1045 does not on its face identify an “archived” date or methodology, nor has any competent testimony been offered as to its nature.
1046	Align identifies this exhibit as ““iPhone Xs and iPhone Xs Max Bring the Best and Biggest Displays to iPhone,” https://www.apple.com/newsroom/2018/09/iphone-xs-and-iphone-xs-max-bring-the-best-and-biggest-displays-to-iphone/ (as archived Sep. 12, 2018, at http://web.archive.org/web/20180912213153/https://www.apple.com/newsroom/2018/09/iphone-xs-and-iphone-xs-max-bring-the-best-and-biggest-displays-to-iphone/).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in any declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November

	2019, 35. This exhibit is not prior art and is thus irrelevant to the instituted ground. FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1046 does not on its face identify an “archived” date or methodology, nor has any competent testimony been offered as to its nature.
1047	Align identifies this exhibit as “Schnitman et al., “Inducing Semantic Segmentation from an Example,” Computer Vision—ACCV 2006 (2006).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit is cited in connection with Align’s improper attempt to re-define the ground set forth in its Petition and is thus improper reply evidence. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: The substance of this exhibit is addressed neither in Align’s papers nor in a timely declaration of Align’s expert, and it does not address the ground on which the Board instituted <i>inter partes</i> review. The exhibit is thus irrelevant to the merits of this proceeding. To the extent Align seeks to rely on the substance of this exhibit, it would constitute an improper incorporation by reference. 37 C.F.R. § 42.6(a)(3); <i>see also</i> PTAB Consolidated Trial Practice Guide November 2019, 35.

	FRE 901: Align has not produced evidence sufficient to establish this exhibit is what Align claims it is, including specifically to the extent Align claims that this exhibit is prior art published on a specific date in a particular manner. Align has thus not authenticated this exhibit. For example, EX1047 does not on its face identify a publication method, date, or format, nor has any competent testimony been offered as to its nature.
1048	Align identifies this exhibit as “Reply Declaration of Dr. Hassan Foroosh.” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: Improper Reply under 37 C.F.R. § 42.23(b): This exhibit contains significant new argument and evidence that alters the nature of the instituted ground and seeks to backfill evidentiary gaps that were the subject of Align’s burden to set forth a prima facie case of obviousness, including by demonstrating a motivation to combine the ground references with a reasonable expectation of success. <i>See</i> PTAB Consolidated Trial Practice Guide November 2019, 74 (“‘Respond,’ in the context of 37 C.F.R. § 42.23(b), does not mean proceed in a new direction with a new approach as compared to the positions taken in a prior filing.”). Specifically, at least the following paragraphs advance and/or support improper new argument in reply: 24-28, 40-45, 47-49, and 57-60. The testimony in this exhibit likewise relies on improper new evidence, including the declaration of Dr. Valley (EX1035), which should be excluded for at least the reasons described above. <i>See</i> ¶¶ 3, 22, 33, 36-37, and 63-65. FRE1 801/802: Each statement in this exhibit is inadmissible hearsay not subject to any exception, pending confirmation that Dr. Foroosh will be made available for cross-examination in a manner complying with all rules governing this proceeding. This exhibit also repeats statements from the various other exhibits cited therein (identified below) which are themselves inadmissible hearsay and/or hearsay-within-hearsay to the extent offered for the truth of the matter asserted therein. <i>E.g.</i> EX1048 ¶¶ 22, 33, 36-37, 63-65 (repeating statements from Dr. Valley’s

	Declaration), 43-44, 46-47, 53 (statements that particular data and/or methods were known). FRE 701/702: The expert testimony in this exhibit, including as to the obviousness or ultimate patentability of the challenged claims, is inadmissible because Dr. Foroosh is not qualified as an expert by knowledge, skill, experience, training, or education to provide the perspective of a person of ordinary skill in the art relevant to U.S. Patent No. 10,755,409, as properly construed. Specifically, Dr. Foroosh is not qualified to provide the perspective of individuals on a multidisciplinary team who are familiar with medical imaging, dental imaging, dentistry, and/or orthodontics. Dr. Foroosh’s opinions depend on the analysis he performed in his opening declaration and are inadmissible for the same reasons. <i>See</i> Paper 12 at 1-2. FRE 402/403/701/702: Each of Dr. Foroosh’s opinions regarding the validity/patentability of U.S. Patent No. 10,755,409 is irrelevant as based on ground references, each of which has not been established as prior art. EX1005; EX1007; EX1012. Furthermore, Dr. Foroosh’s expert testimony regarding, and based on, each of the inadmissible exhibits objected to herein is inadmissible because it is not based on sufficient facts or data, is not the product of reliable principles and methods, and does not reflect a reliable application of the principles and methods to the facts of the case. FRE 402/403/701/702: Dr. Foroosh’s testimony is likewise inadmissible as ipse dixit, including because he has not cited sufficient evidence to support his conclusions, fails to meaningfully discuss each of the exhibits he does cite, and offers only conclusory assertions regarding the state of the art, the motivation to combine the ground references, and the reasonable expectation of success in doing so. <i>E.g.</i>, ¶¶ 24-28, 30-33, 38-39, 40-49, 52-53, 55-56, 60, 63-65 (conclusory testimony regarding motivation to combine and reasonable expectation of success).
1049	Align identifies this exhibit as “Deposition Transcript of Dr. Hassan Foroosh (with errata).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows:

	The rules governing this proceeding do not contemplate the unilateral submission of deposition errata and do not provide for alterations to the substance of a witness’s testimony, including for “clarification.” This exhibit is not an appropriate exhibit to Align’s Reply, was filed without the required authorization by the Board, and should be disregarded to the extent that any errata other than to correct a mistranscription are advanced as pertinent to the subject matter of this proceeding.
1050	Align identifies this exhibit as “Order Granting Final Judgment Pursuant to Joint Stipulation, Dental Monitoring SAS v. Align Technology, Inc., Case No. 3-22-cv-07335 (N.D. Cal., Aug. 8, 2024).” Paper 23 at 31. Dental Monitoring objects to this exhibit as follows: FRE 801/802/105: The statements contained in this exhibit, to the extent they are offered to prove the truth of any matters asserted, are inadmissible hearsay that does not fall under any exception. Even if admissible for some purpose, the exhibit must be restricted to its proper scope. FRE 402/403: Align cites this exhibit only to provide notice regarding related district court proceedings. Neither Align nor its expert rely on this exhibit in connection with the issues to be decided in this proceeding, and it is thus entirely irrelevant, including because the subject matter of this exhibit is currently subject to appeal.

Date: August 27, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), the undersigned certifies that on August 27, 2024, a complete copy of **PATENT OWNER'S SECOND OBJECTIONS TO EVIDENCE** was served in its entirety on the Petitioner's counsel of record by email to:

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