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Transcript of Maureen A. Valley

Date: December 18, 2019

Case: 3Shape A/S and 3Shape Inc. -v- Align Technology, Inc. (PTAB)

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3SHAPE EXHIBIT 1025

3Shape v. Align

IPR2019-00132

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

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Conducted on December 18, 2019

1 (1 to 4)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 UNITED STATES PATENT AND TRADEMARK OFFICE ----- BEFORE THE PATENT TRIAL AND APPEAL BOARD ----- 3SHAPE A/S and 3SHAPE INC., Petitioner, v. ALIGN TECHNOLOGY, INC., Patent Owner. ----- Case No. IPR2019-00132 Patent 7,112,065 DEPOSITION OF MAUREEN A. VALLEY Larkspur, California Wednesday, December 18, 2019 11:59 a.m. Job No.: 273514 Pages: 1 - 70 Reported By: Charlotte Lacey, RPR, CSR No. 14224	3 A P P E A R A N C E S ON BEHALF OF PETITIONER 3SHAPE A/S and 3SHAPE INC.: TODD W. WALTERS, ESQUIRE BUCHANAN INGERSOLL & ROONEY, PC 1737 King Street, Suite 500 Alexandria, Virginia 22314 (703) 838-6556 ON BEHALF OF PATENT OWNER ALIGN TECHNOLOGY, INC.: TRENT W. MERRELL, ESQUIRE JASON D. EISENBERG, ESQUIRE STERNE KESSLER GOLDSTEIN & FOX 1100 New York Avenue, Northwest Washington, DC 20005 (202) 371-2600
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	2 DEPOSITION OF MAUREEN A. VALLEY, held at the Courtyard by Marriott San Francisco Larkspur Landing/Marin County, 2500 Larkspur Landing Circle, Larkspur, California Pursuant to notice, before Charlotte Lacey, Certified Shorthand Reporter, in and for the State of California.	4 I N D E X WITNESS MAUREEN A. VALLEY Examination by Mr. Walters 5 I N D E X O F E X H I B I T S EXHIBITS DESCRIPTION PAGE (None offered) PREVIOUSLY MARKED EXHIBITS EXHIBIT DESCRIPTION PAGE Exhibit 1001 U.S. Patent No. 7,112,065 B2 54 Exhibit 1012 Declaration of Dr. Eli Saber, 67 Ph.D., for Inter Partes Review of U.S. Patent No. 7,112,065 (Claims 1-9 and 11) Under 35 U.S.C. 311-319 and 37 C.R.R. 42.100 Exhibit 2003 Declaration of Dr. Maureen A. 5 Valley, DMD, MPH, MS, in Support of Patent Owner's Response, IPR2019-00132, U.S. Patent No. 7,112,065

49 1 Q And it goes from paragraph 61 through 67. Is 2 there anything you state in paragraphs 61 through 67 of 3 your declaration that was not known by a POSITA before 4 the effective filing date of July 22nd, 2002? 5 MR. MERRELL: Objection; form. 6 A Yes. 7 Q What would that be? 8 A So prior to July 22nd, 2002, this particular 9 technology was not available to a POSITA. They were 10 quite aware of the traditional and existing methods for 11 impression taking and all of the frustrations, issues, 12 and problems around that procedure. As I outlined in my 13 declaration. 14 Q You said "this particular technology was not 15 available." What are you referring to specifically? 16 A I'm referring to being of one in the dental 17 arts. Now, it may have been available, but was it in 18 usage by a person of ordinary skill, an ordinary dentist 19 or an ordinary orthodontist in the field, no, I do not 20 recall this being an ordinary type of thing that was 21 utilized in practices at that time. 22 That's not to state that it wasn't used, but 23 in your typical ordinary majority of the dental 24 practices out there, this wasn't technology used at the 25 time. We were still -- these -- these practices were	51 1 it was quite a game changer. So there was a lot of 2 skepticism. 3 Q Is it your understanding that a person of 4 ordinary skill in the art would not have been aware of 5 the available prior art? 6 MR. MERRELL: Objection; form. 7 A I want to make sure that I'm understanding 8 your question. Are you saying that a POSITA would not 9 have been aware of impression taking with the prior 10 method of alginate or silicon and plaster? Because if 11 that's your question, then I would say that of course a 12 POSITA would have known about the prior art. That's the 13 method that they were doing. 14 Q Go -- if we go to paragraph 61, would a POSITA 15 have been aware of digital impression devices? 16 A In 2002? 17 Q Prior to July 22nd of 2002. 18 A I have not been asked to opine on that 19 specifically, but if you were to ask me from one in the 20 field, then I would say they may have read about 21 technology in their journals or upcoming technology in 22 journal articles or publications they read, or maybe 23 they might have even heard of, you know, the dawn of 24 digital impression taking at a CE course. But it 25 certainly wasn't something that -- maybe it was a
50 1 still using the traditional methods and all the problems 2 and frustrations that arise from them. 3 In the dental and orthodontic field, it's a 4 very conservative field. It takes a while before new 5 methods become mainstream. 6 Q Prior to July 22nd of 2002, were the methods 7 known? 8 A I'm not sure. I -- I wasn't asked to opine on 9 prior art. I can only tell you from my experience in 10 the dental field that -- and not only in the dental 11 field that means practicing, but also teaching -- that 12 this was not a technique that was mainstream digital 13 impression methods. 14 Now, was it out there? Possibly. I don't 15 recall. But it certainly wasn't something that, for 16 instance, I was familiar with, either myself or my 17 colleagues or the other faculty members at the 18 university using. 19 Again, as I mentioned, even if the technology 20 was out there -- and I'm -- I don't know what technology 21 was out there or I can't opine on that today. I wasn't 22 asked to. But it takes a while for a conservative group 23 of people -- that is, those in the dental art -- to take 24 in new technologies. Especially around the year 2002. 25 These were novel concepts. Digital impression taking,	52 1 thought or a glimmer at the time and "what's coming 2 next" type of conversation. 3 But at that time, it was certainly still, in 4 your common ordinary dental office, impression taking 5 using the traditional method that had been around for 6 quite a long time since -- a very long time, and that 7 involved impression materials such as alginate and 8 silicon and plaster and everything else that is required 9 to produce a physical model of a patient's dentition. 10 Q Is it your belief that a POSITA would be 11 limited to the general dentist who might not be aware of 12 the latest and -- and greatest in the field? 13 MR. MERRELL: Objection; form. 14 A "To the generally dentist"? I don't 15 understand your question. 16 Q To the general dentist who might not be aware 17 of the latest and greatest in the field. 18 MR. MERRELL: Again, objection; form. 19 A Can you restate your entire question? 20 Q Do you understand that a POSITA is a 21 hypothetical person? 22 A Yes. 23 Q And -- and do you understand that a POSITA is 24 a person who is aware of all of the available prior art? 25 A Yes.