

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. IPR2024-00052
Patent No. 11,049,248

PETITIONER'S SECOND OBJECTIONS TO EVIDENCE

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(b)(1), Align Technology, Inc. (“Petitioner”) submits the following objections to the Dental Monitoring SAS’s (“Patent Owner”) Exhibits 2015, 2028-2038, 2040-2042, 2045-2048, 2053-2056, 2058-2060, and 2063-2064.

Petitioner’s objections are made pursuant to the Code of Federal Regulations (“C.F.R.”) governing this proceeding, including without limitation 37 C.F.R. §§ 42.61-42.65 and § 42.6(a)(3). As required by 37 C.F.R. § 42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

II. OBJECTIONS

1. Declaration of John T. Mongan (Exhibit 2028)

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 701, 702, 703 (Expert Foundation and Opinions); F.R.E. 802 (Hearsay Inadmissible).

Exhibit 2028 is a declaration of Dr. John T. Mongan and is objected to in its entirety. Dr. Mongan fails to provide a reasoned basis or other foundation for his opinions. Moreover, Dr. Mongan’s opinions are not the product of reliable principles and methods. Further, Dr. Mongan’s declaration is not relevant at least insofar as numerous paragraphs, including at least paragraphs 1-46, 51, 92, 95, 97,

122-23, 141-44, 148-49, 151-52, 161-68, 170-71, 184, 192-96, 202, and 204-06, are not cited in Patent Owner's response. To the extent exhibit 2028 is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. F.R.E. 401-403. Exhibit 2028 is further objected to under objected to under F.R.E. 802 as resting on statements constituting hearsay without satisfying any of the hearsay exceptions.

2. Declaration of Budi Kusnoto (Exhibit 2030)

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 701, 702, 703 (Expert Foundation and Opinions); F.R.E. 802 (Hearsay Inadmissible).

Exhibit 2030 is a declaration of Dr. Budi Kusnoto and is objected to in its entirety. Dr. Kusnoto fails to provide a reasoned basis or other foundation for his opinions. Moreover, Dr. Kusnoto's opinions are not the product of reliable principles and methods. Further, Dr. Kusnoto's declaration is not relevant at least insofar as numerous paragraphs, including at least paragraphs 13-23, 41, 50, 53, 60, 65-66, 69, 78-79, and 91, are not cited in Patent Owner's response. To the extent exhibit 2030 is deemed relevant, its admission would be unduly prejudicial, misleading, and a waste of time. F.R.E. 401-403. Exhibit 2030 is further objected

to under objected to under F.R.E. 802 as resting on statements constituting hearsay without satisfying any of the hearsay exceptions.

3. Exhibits 2032-2035

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 802 (Hearsay Inadmissible); F.R.E. 901 (Authenticating or Identifying Evidence).

Petitioner objects to exhibits 2032-2035 as lacking authentication under F.R.E. 901 because sufficient evidence has not been provided to establish the authenticity of the exhibits. The exhibits are not self-authenticating, and Petitioner has failed to provide a sponsoring witness.

Additionally, Petitioner objects to exhibits 2032-2035 under F.R.E. 401-403, as the exhibits are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. Further, exhibits 2032 and 2033 do not appear from their face to be prior art publications, and it has not been established how these exhibits are relevant to any fact of consequence in this trial. Moreover, to the extent any of exhibits 2032-2035 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time.

Exhibits 2032-2035 are further objected to under F.R.E. 802 as containing statements constituting hearsay without satisfying any of the hearsay exceptions.

4. Exhibits 2036-2037

Grounds for Objection: Grounds for Objection: F.R.E. 106 (Remainder of or Related Writings or Recorded Statements); F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons); F.R.E. 802 (Hearsay Inadmissible).

Exhibit 2036 appears to be an excerpt from a deposition transcript, and exhibit 2037 appears to be a selection of excerpted pages from a declaration. The remainder of these excerpted documents are omitted, including material which, under F.R.E. 106, fairly ought to be considered at the same time as the provided excerpts.

Additionally, Petitioner objects to exhibits 2036-2037 under F.R.E. 401-403, as the exhibits are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence.

5. Exhibits 2015, 2029, 2031, 2038, 2040-2042, 2045-2047, 2053, 2055-2056, 2060, and 2063-2064

Grounds for Objection: F.R.E. 401 (Test for Relevant Evidence); F.R.E. 402 (General Admissibility of Relevant Evidence); F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons).

Petitioner objects to exhibits 2015, 2029, 2031, 2038, 2040-2042, 2045-2047, 2053, 2055-2056, 2058, 2060, and 2063-2064 under F.R.E. 401-402, as the exhibits are not relevant to the current proceedings, and their probative value is minimal and is substantially outweighed by the risk of confusing the issues, wasting time, and needlessly presenting cumulative evidence. For example, none of exhibits 2015, 2029, 2031-2033, 2035, 2038, 2046-2047, 2056, and 2063 is cited in Patent Owner's response. Moreover, to the extent any of exhibits 2015, 2029, 2031, 2038, 2040-2042, 2045-2047, 2053, 2055-2056, 2060, and 2063-2064 are deemed relevant, their admission would be unduly prejudicial, misleading, and a waste of time.

III. CONCLUSION

The aforementioned exhibits were submitted with Patent Owner's response. These objections are made within 5 business days of the exhibits' submission with Patent Owner's response pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: July 19, 2024

/ Matthew A. Argenti /
Matthew A. Argenti, Lead Counsel
Reg. No. 61,836

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petitioner's Objections to Evidence was served on July 19, 2024, at the following electronic service addresses:

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Respectfully submitted,

Dated: July 19, 2024

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