From: Mark Scott <Mark_Scott@txwd.uscourts.gov>
Sent: Tuesday, January 21, 2025 5:35 PM
To: McClellen, Forrest M.; TXWDml_NoJudge Chambers WA Judge Gilliland
Cc: Potter, Amanda; blui@mofo.com; Nash, Brian C.; Durie, Daralyn J.; Bennett, Ian A.; Xin, Jenny; Fitzgerald, Mika M.; RHung@mofo.com; Schnell, Austin M.; Travis Underwood; melissa@gillamsmithlaw.com; adamreich@paulhastings.com; emmafarrow@paulhastings.com; jamespearl@paulhastings.com; michaelmurray@paulhastings.com; noahpinegar@paulhastings.com; tomcounts@paulhastings.com; Salvatore, Jerry A.; Santasawatkul, Hannah; Hanson, Harry; Ovington, Holly; Knight, Jonathan P.; Mueller, Joseph; Lalli, Marissa; Ford, Mark; Khan, Omar; Israelsen, R. Gregory; Stiller, Robert B.; Shearer, Tyler L.; Ferrera, Vinita
Subject: Align Technology Inc. v. ClearCorrect Operating LLC, et al., No. 24-cv-00187-ADA-DTG (W.D. Tex.) - Preliminary Claim Constructions

EXTERNAL SENDER

Counsel,

Good afternoon. The Court provides the following preliminary constructions for the disputed terms in advance of tomorrow's *Markman* hearing. The purpose of preliminary constructions is to streamline the hearing by providing the parties an indication of the Court's current position for each term. Although the parties are, of course, free to argue for their originally proposed construction, it is generally unlikely that the Court will select a party's originally proposed construction over the preliminary construction. As such, the Court believes that making arguments to fine-tune the preliminary construction may be more helpful. The preliminary constructions are not final, as the Court may change some constructions based on the arguments at the hearing.

To the extent a junior attorney will be arguing a term, please let me know which terms the junior attorney will be arguing. The Court always encourages and supports opportunities for younger lawyers.

By **11 AM CST tomorrow**, please submit any slides the parties wish to use at the *Markman* hearing, and 'cc the other side when doing so. By that same time, please also let me know if the parties have amended (or eliminated) any terms to be construed. The Court will also hear argument on ECF No. 96, Plaintiff's Motion to Dismiss Counterclaims, as requested earlier.

Thanks very much,
Mark

#	Claim Term	Align's Proposed Construction	ClearCorrect's Proposed Construction	Court's Preliminary Constructions
1	"through at least one of staggering and roundtripping of at least one dental object"	by staggering or roundtripping at least one dental object	through assessment of both staggering and roundtripping with respect to avoiding collisions with or obstructions between at least one dental object	Plain and ordinary meaning which includes "by staggering or roundtripping at least one dental object"

#	Claim Term	Align's Proposed Construction	ClearCorrect's Proposed Construction	Court's Preliminary Constructions
	'444 patent, cl. 1 (and dependent claims)			
2	"an optimal number of stages for the order of movement of the dental objects" '444 patent, cls. 5, 19, 33	the largest number of the minimum stages needed to place the patient's teeth in their final, desired position	Indefinite	The largest number of the minimum stages needed to place the patient's teeth in their final, desired position
3	"V-shaped pattern" '444 patent, cls. 8, 22, 36 '456 patent, cl. 3	No construction necessary (plain and ordinary meaning)	A pattern where teeth having the same and/or similar positions on the arch will be moved beginning at the same stage, and will move continuously until they reach their final position, and where the most posterior-positioned teeth move first (e.g., the molars, or teeth in position 7 and/or 8) then the next anterior-positioned teeth move sequentially until all of the teeth reach their final position, with the next anterior-positioned teeth not scheduled to begin moving until at least approximately the half-way stage of its respective posterior-positioned tooth	Plain and ordinary meaning
4	"A-shaped pattern" '444 patent, cls. 9, 23, 37 '456 patent, cl. 3	No construction necessary (plain and ordinary meaning)	A pattern where teeth having the same and/or similar positions on the arch will be moved beginning at the same stage, and will move continuously until they reach their final position, with the most anterior-positioned teeth (e.g., the incisors, or teeth in positions 1 and/or 2) moving first and then the next posterior-positioned teeth sequentially moving until all of the teeth reach their final position	Plain and ordinary meaning

#	Claim Term	Align's Proposed Construction	ClearCorrect's Proposed Construction	Court's Preliminary Constructions
5	"M-shaped pattern" '444 patent, cls. 10, 24, 38 '456 patent, cl. 3	No construction necessary (plain and ordinary meaning)	A pattern where teeth having the same and/or similar positions on the arch will be moved beginning at the same stage, and will move continuously until they reach their final position, with teeth between the anterior teeth and the posterior teeth (e.g., the bicuspids, or teeth in positions 4 and/or 5) and both the adjacent anterior and/or adjacent posterior teeth then sequentially moving until all of the teeth reach their final position	Plain and ordinary meaning
6	"mid-line shift pattern" '444 patent, cls. 11, 25, 39 '456 patent, cl. 3	No construction necessary (plain and ordinary meaning)	A pattern where tooth movement begins on one side of the patient's arch to center the teeth with respective to the mid-line of the patient's mouth, with the next tooth/teeth to move not scheduled to begin moving until at least approximately the half way stage of its respective previously scheduled tooth/teeth	Plain and ordinary meaning
7	"means for receiving an electronic representation of each dental object of the plurality of dental objects in relation to one another" '444 patent, cl. 15 (and dependent claims)	a computing device and equivalents *E.g.*, '444 patent, 5:12-16	Subject to § 112 ¶ 6 • <u>Function:</u> receiving an electronic representation of each dental object of the plurality of dental objects in relation to one another • <u>Structure:</u> None Indefinite	Not indefinite Structure at '444 patent, 5:12-16: a computing device and equivalents
8	"means for determining an order of movement for each respective dental object such that the dental	a computer program that performs the steps identified in Figure 2B and equivalents	Subject to § 112 ¶ 6 • <u>Function</u>: determining an order of movement for each respective	Indefinite

#	Claim Term	Align's Proposed Construction	ClearCorrect's Proposed Construction	Court's Preliminary Constructions
	objects avoid colliding with each other on their respective routes from said initial position to said desired final position" '444 patent, cl. 15 (and dependent claims)	*E.g.*, '444 patent, 5:19-22, 5:29-6:46, Fig. 2B	dental object such that the dental objects avoid colliding with each other on their respective routes from said initial position to said desired final position. • Structure: None Indefinite	
9	"means for determining a route each respective dental object will move to achieve its respective final position" '444 patent, cl 16 (and dependent claims)	a computer program that is configured to segment an initial digital dataset into digital models of individual dental objects and gingival tissue, calculate a transformation for each dental object, and then calculate one or more intermediate positions for each dental object, taking into account any constraints imposed on the movement of dental objects and any collisions that might occur between dental objects as the dental objects move from one treatment stage to the next and equivalents *E.g.*, '444 patent, 3:19-24, 3:36-61	Subject to § 112 ¶ 6 • Function: determining a route each respective dental object will move to achieve its respective final position • Structure: None Indefinite	Indefinite
10	"means for determining (a), (b), and (c) in relation to each of the other dental objects"	a computer program that is configured to segment an initial digital dataset into digital models of individual dental objects and gingival	Subject to § 112 ¶ 6 • Function: determining (a), (b), and (c) in relation to each of the other dental objects	Indefinite

#	Claim Term	Align's Proposed Construction	ClearCorrect's Proposed Construction	Court's Preliminary Constructions
	'444 patent, cls. 17 (and dependent claim)	tissue, calculate a transformation for each dental object, and then calculate one or more intermediate positions for each dental object, taking into account any constraints imposed on the movement of dental objects and any collisions that might occur between dental objects as the dental objects move from one treatment stage to the next and equivalents *E.g.*, '444 patent, 3:19-24, 3:36-61	• Structure: None Indefinite	
11	"means for determining a rate at which each respective dental object will move along its respective route" '444 patent, cls. 16 (and dependent claims)	a computer program that determines a rate at which each respective dental object will move along its respective route *E.g.*, '444 patent, 4:58-5:10	Subject to § 112 ¶ 6 • Function: determining a rate at which each respective dental object will move along its respective route • Structure: None Indefinite	Indefinite
12	"means for determining a total distance each respective dental object will move" '444 patent, cl. 20	a computer program for determining a total distance each respective dental object will move and equivalents *E.g.*, '444 patent, 4:58-5:10	Subject to § 112 ¶ 6 • Function: determining a total distance each respective dental object will move • Structure: None Indefinite	Indefinite
13	"means for adjusting at least one of the route and the rate of at least	a computer program that performs collision avoidance via round-tripping,	Subject to § 112 ¶ 6 • Function: adjusting at least one of the	Not indefinite. Structure at '444 patent, 12:41-65:

#	Claim Term	Align's Proposed Construction	ClearCorrect's Proposed Construction	Court's Preliminary Constructions
	one dental object to avoid collision with at least one other dental object" '444 patent, cl. 18	staggering, or slowing, wherein the computer program first attempts staggering of the teeth movement, followed by slowing-down/interim key frames if the staggering does not avoid collisions, and then followed by round-tripping as a last resort and equivalents *E.g.*, '444 patent, 12:41-65	route and the rate of at least one dental object to avoid collision with at least one other dental object • Structure: None Indefinite	a computer program that performs collision avoidance via round-tripping, staggering, or slowing, wherein the computer program first attempts staggering of the teeth movement, followed by slowing-down/interim key frames if the staggering does not avoid collisions, and then followed by round-tripping as a last resort and equivalents
14	"means for determining an optimal number of stages for the order of movement of the dental objects" '444 patent, cl 19 (and dependent claim)	a computer program that determines an optimal number of stages by selecting the largest number of the minimum number of stages needed to place the dental objects in their final, desired positions and equivalents *E.g.*, '444 patent, 15:6-20	Subject to § 112 ¶ 6 • Function: determining an optimal number of stages for the order of movement of the dental objects • Structure: None Indefinite	Not indefinite. Structure at '444 patent, 15:6-20: a computer program that determines an optimal number of stages by selecting the largest number of the minimum number of stages needed to place the dental objects in their final, desired positions and equivalents
15	"means for ordering the movement of the dental objects in a V-shaped pattern" '444 patent, cl. 22	a computer program configured to utilize the pattern depicted in Figure 5 and equivalents *E.g.*, '444 patent, 9:12-15, 9:42-44, Fig. 5	Subject to § 112 ¶ 6 • Function: ordering the movement of the dental objects in a V-shaped pattern • Structure: None Indefinite	Not Indefinite. Structure at '444 patent, 9:12-15, 9:42-44, Fig. 5: computer program configured to utilize the pattern depicted in Figure 5 and equivalents
16	"means for round tripping at least one dental object" '444 patent, cl. 27	a computer program configured to move a first tooth out of the path of a second tooth, and once the	Subject to § 112 ¶ 6 • Function: round tripping at least one dental object	Not indefinite. Structure at '444 patent, 12:51-55:

#	Claim Term	Align's Proposed Construction	ClearCorrect's Proposed Construction	Court's Preliminary Constructions
		second tooth has moved sufficiently, move the first tooth back to its previous position before proceeding to a desired final position of the first tooth and equivalents *E.g.*, '444 patent, 12:51-55	• Structure: None Indefinite	a computer program configured to move a first tooth out of the path of a second tooth, and once the second tooth has moved sufficiently, move the first tooth back to its previous position before proceeding to a desired final position of the first tooth and equivalents
17	"replace [replacing] at least a portion of the [removed] surface portion of the model [...] using the received second scan data [at least a portion of the second scan data]" '936 patent, cls. 1 (and dependent claims), 9 (and dependent claims), 17 (and dependent claims)	No construction necessary (plain and ordinary meaning)	[register] / [registering] the [received] second scan data with a retained portion of the model after removing the scan data of the removed surface portion	[register] / [registering] the [received] second scan data with a retained portion of the model after removing the scan data of the removed surface portion
18	"second scan data of the patient's teeth" '936 patent, cl. 17 (and dependent claims)	No construction necessary (plain and ordinary meaning)	new scan data of the patient's teeth after the patient's intraoral cavity itself has physically changed	Plain and Ordinary Meaning

Mark J. Scott
Law Clerk to the Honorable Derek T. Gilliland
U.S. District Court, Western District of Texas
Office: **254-340-6151**