UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ALIGN TECHNOLOGY, INC., Plaintiff, v. CLEARCORRECT OPERATING, LLC, CLEARCORRECT HOLDINGS, INC., INSTITUT STRAUMANN AG, & STRAUMANN USA, LLC Defendants	Case No. 6:24-cv-00187-ADA-DTG **JURY TRIAL DEMANDED**
CLEARCORRECT OPERATING, LLC, CLEARCORRECT HOLDINGS, INC., & STRAUMANN USA, LLC, Counterclaim-Plaintiffs, v. ALIGN TECHNOLOGY, INC., Counterclaim-Defendant.	

JOINT MOTION TO AMEND THE CASE SCHEDULE

Plaintiff and Counterclaim-Defendant Align Technology, Inc. ("Align"), and Defendant Institut Straumann AG, Defendants and Counterclaim-Plaintiffs ClearCorrect Operating LLC, ClearCorrect Holdings, Inc., Straumann USA, LLC (collectively, "ClearCorrect") jointly submit this motion to extend the case schedule.

The parties have met and conferred regarding the case schedule following the Court's guidance at the June 4, 2025 hearing. The parties are unable to come to agreement on the dates for patent claim narrowing and substantial completion and respectfully request that the Court resolve the party's scheduling dispute.

Align's Position:

Align has made significant progress toward compliance with the current substantial completion deadline but ran into unexpected roadblocks and difficulties with a new electronic discovery vendor. Align proposes a substantial completion deadline of August 1, 2025 for document discovery, with the exception of customer contracts (addressed below). Notably, this is only three weeks beyond the proposal put forth by ClearCorrect and constitutes a more accurate approximation of when Align can achieve substantial completion of document production. Based on current estimates, this time is necessary for Align to substantially complete document production consistent with the Court's instructions at the June 4, 2025 hearing. Specifically, ClearCorrect's broad ESI search terms have hit on well over *one million* Align custodial documents, many of which are not relevant to Align's patent claims or ClearCorrect's antitrust counterclaims. While Align has produced well over 400,000 documents from this ESI data, additional time is needed to complete further responsiveness and privilege review. Align is also in the process of complying with "go-get" requests, some of which are necessitating time-consuming investigations.

For customer contracts, Align proposes a substantial completion deadline 30 days after the initial substantial completion deadline for several reasons. *First*, Align does not have a centralized repository for customer contracts, and even for the subset of contracts in SalesForce, Align cannot readily bulk export contracts. *Second*, some customer agreements may be housed in non-centralized locations, such as individual employees' hard drives. (For context, Align has more than 21,000 employees.) To the extent the Court's order contemplates Align must attempt to reasonably identify and collect U.S. customer agreements in these locations, the effort, time, and expense necessary to investigate will be Herculean—Align estimates that an exorbitant number of hours would be required. *Third*, ClearCorrect does not need every customer agreement during fact discovery; any relevance the contracts may possibly have is to the foreclosure analysis that ClearCorrect's experts

are contemplating, and expert discovery will lag fact discovery. *Fourth*, ClearCorrect has not produced all of *its* customer agreements—despite receiving a document request from Align (Request for Production No. 37) that substantively mirrors ClearCorrect's documents requests for Align's customer agreements, and strenuously arguing to the Court that customer agreements are of critical import to the countersuit—and Align's proposal permits it sufficient time to do so. Since ClearCorrect now insists that it need not produce its customer agreements because technically the Court's June 4 order was limited to Align's customer agreements, Align may be forced to raise ClearCorrect's refusal to produce its own customer agreements (as well as its insufficient production of transactional data) with the Court, and Align's proposal permits it sufficient time to do so.

Align requires sufficient time to complete its infringement analysis and narrow its patent claims from the currently asserted 183 claims to 100 claims, including time to review the additional source code that the Court recently ordered ClearCorrect to produce. The current schedule contemplates that the parties would discuss claim narrowing in two required sessions, the first of which is scheduled nearly two months after the deadline for Final Contentions. ClearCorrect is now proposing that Align be required to reduce its claims to 100 by June 20, 2025—two weeks from today. That is unreasonable and would leave Align little time to complete its code review and infringement analysis. Align proposes a deadline of July 18, 2025, for Align to reduce the number of asserted claims to 100, and a deadline of August 2, 2025, for ClearCorrect to reduce its prior art references to 6 references per patent family. Under that schedule, the case would be substantially narrowed well before the deadline for the parties to serve Final Contentions. ClearCorrect takes issue with the prior art reduction that Align proposes but offers no proposal of its own, apparently hoping to impose a unilateral reduction of claims on Align alone. If Align is required to reduce its asserted claims, then ClearCorrect must be required to correspondingly reduce its asserted prior art.

ClearCorrect's Position:

Substantial Completion. ClearCorrect has already suffered significant prejudice from Align's failure to meet the Court-ordered deadline for substantial completion. Align has had ClearCorrect's substantially complete production for over a month. ClearCorrect, by contrast, is still waiting for much of Align's ESI production (including from Align's CEO and CFO), as well as *almost all* of Align's antitrust "go-get" productions. Align now seeks a significant *additional* extension of the deadline of nearly two more months, and a *further* extension for production of its customer contracts of yet another month after that. And, to compound the prejudice, Align is accommodating this unjustified extension by reducing the existing schedule's contemplated 3-month interval between substantial production and close of fact discovery, thereby compressing ClearCorrect's ability to review and use Align's complete production in depositions.

Align's need for such a significant extension is a problem of its own making. As Align acknowledged this week, it is so far from completing its production because it wrongly believed it was entitled to trickle out documents all the way up to the close of fact discovery. The length of Align's requested extension is evidence of just how much of its production remains outstanding. If Align had not left so much to collect and review, it could easily complete its production of contracts in a month's time. Align is represented by a significant team of lawyers from two national firms. Align should substantially complete its document production (including its customer contracts) by July 11, 2025—that is, more than one month from now, and more than two months from when ClearCorrect substantially completed its production. Furthermore, Align's position improperly uses this scheduling submission to attempt to re-litigate the discovery dispute that the Court has heard and decided relating to contracts by raising the same arguments the Court has already rejected.

Claim Narrowing. On June 4, the Court ordered Align, in the near term, to substantially narrow its asserted patent claims from 179 claims to no more than 100 claims. Despite that clear

directive, Align now seeks an additional 6 weeks, until July 18, to narrow its claims, and it also requests that the Court order ClearCorrect to narrow its prior art references to ***six per patent family*** by August 2. Neither request is warranted.

First, Align has everything it needs right now to make this initial narrowing, which would still leave Align with a very large number of asserted claims (100). ClearCorrect has produced many hundreds of technical documents describing the detailed operation and functionality of the accused products; made available large volumes of source code over eight months ago; served substantive written discovery responses over the last six months; and has produced more than 400,000 additional documents. Further, at Align's request, the Court entered its final *Markman* order on June 5—one day after the hearing—to ensure Align narrows its claims in the near term. ClearCorrect's proposed deadline of June 20 allows Align sufficient time to narrow its asserted claims as ordered by the Court.

Second, Align's eleventh-hour request that the Court order ClearCorrect to narrow its prior-art references to 6 references per patent family—18 ***references total for the 100 claims Align would be asserting***—by August 2 is unjustified. As an initial matter, the parties did not have an opportunity to brief or argue this issue. It was not the subject of any prior submissions or hearing. Moreover, Align's request that ClearCorrect narrow to 18 total references across 9 patents with 100 asserted claims would be highly prejudicial to the defendant and far outside typical practice at this stage in the case. Typical case-narrowing requirements allow a greater number of prior-art references than asserted claims.[1] In addition, Align's proposed date for ClearCorrect's narrowing—August 2—is ***one*** day after Align's proposed substantial competition deadline. If adopted, this would provide ClearCorrect a ***single*** day to review Align's documents (including documents relating to Align prior

[1] *See, e.g.*, U.S. District Court of the Eastern District of Texas, *Model Order Focusing Patent Claims and Prior Art To Reduce Costs*, https://www.txed.uscourts.gov/sites/default/files/forms/ModelPatentOrder.pdf.

art) and decide which references to pursue in invalidity grounds.[2] ClearCorrect is amenable to meeting and conferring with Align on when and how much to narrow its prior-art references, but it is premature to include in the case schedule an arbitrary and particularly draconian reduction in references (6 per patent family) before any such conference and before Align has substantially narrowed its 179 asserted claims. Align's failure to meet a substantial competition deadline should not result in a windfall for Align that results in ClearCorrect being forced to unduly narrow its defenses. ClearCorrect submits that the Court should strike Align's proposed deadline for narrowing of prior art references.

The parties respectfully submit the following proposed case schedule and ask that the Court extend certain case deadlines as set forth below.

Current Date	Align Proposal	ClearCorrect Proposal	Item
n/a	6/13/25		Deadline for parties to identify additional ESI custodians.
n/a	7/18/25	6/20/25	Deadline for Align to narrow its asserted patent claims to no more than 100 claims.
n/a	6/27/25		Deadline for parties to finalize search terms for additional ESI custodians.
4/28/25	8/1/25	7/11/25	Substantial completion deadline for document production.[3]
n/a	8/2/25	n/a	Deadline for ClearCorrect to narrow its prior art references to 6 references per patent family.
5/22/25	8/22/25	8/4/25	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to infringement contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.

[2] Further, Align's request does not properly clarify that any reduction in the number of prior-art references applies only to references cited as anticipatory under Section 102 or as part of obviousness combinations under Section 103—not to prior-art references cited as technological background or to show the knowledge of persons of ordinary skill in the art at the time of the alleged inventions.

[3] The parties commit to begin rolling productions in good faith and as soon as practicable.

Current Date	Align Proposal	ClearCorrect Proposal	Item
n/a	9/1/25	n/a[4]	Substantial completion of customer contract production.
n/a	9/12/25		Substantial completion deadline for document production for additional ESI custodians.
6/16/25	9/25/25	8/29/25	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
7/24/25	10/2/25	10/2/25	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerk to arrange a teleconference with the Court to resolve the disputed issues.
7/29/25	10/17/25	10/7/25	Close of Fact Discovery.
8/28/25	11/14/25	11/6/25	Opening Expert Reports.
9/30/25	12/17/25	12/9/25	Rebuttal Expert Reports.
10/28/25	1/21/2025	1/13/26	Close of Expert Discovery.
11/4/25	2/3/26	1/20/26	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court's law clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
11/11/25	2/6/26	1/27/26	Dispositive motion deadline and *Daubert* motion deadline. Deadline for parties desiring to consent to trial before the magistrate judge to submit Form AO 85, "Notice, Consent, And Reference Of A Civil Action To A Magistrate Judge," available at https://www.uscourts.gov/forms/civilforms/notice-consent-and-reference-civil-action-magistratejudge.

[4] Under ClearCorrect's proposal, Align's customer contract production would be due on the substantial completion date, i.e. July 11, 2025.

Current Date	Align Proposal	ClearCorrect Proposal	Item
11/25/25	3/6/26	2/10/26	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, deposition designations).
12/9/25	3/11/26	2/24/26	Serve objections to pretrial disclosures/rebuttal disclosures.
n/a			Oppositions to MSJs and Daubert Motions
12/15/25	3/13/26	3/2/26	Parties to jointly email the Court's law clerk (See OGP at 1) to confirm their pretrial conference and trial dates.
12/16/25	3/20/26	3/3/26	Serve objections to rebuttal disclosures; file motions *in limine*.
n/a	4/1/26	3/17/26	Replies in Support of MSJs and Daubert
1/6/26	4/8/26	3/24/26	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, deposition designations); file oppositions to motions *in limine*. From this date onwards, the parties are obligated to notify the Court of any changes to the asserted patents or claims. Such notification shall be filed on the docket within seven (7) days of the change and shall include a complete listing of all asserted patents and claims. If a change to the asserted patents or claims requires leave of court (for example, if a party is moving for leave to assert additional claims), notification shall not be required until the Court grants leave, at which point the notification must be filed within seven (7) days.
1/13/26	4/10/26	3/31/26	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to file replies to motions *in limine*.
1/20/26	4/17/26	4/7/26	Deadline to meet and confer regarding remaining objections and disputes on motions *in limine*.
1/22/26	4/21/26	4/9/26	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions *in limine*.

Current Date	Align Proposal	ClearCorrect Proposal	Item
1/27/26	4/24/26	4/14/26	Final Pretrial Conference. Held in person unless otherwise requested.
2/16/26	5/4/26		Jury Selection/Trial.[5]

[5] If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.

Dated: June 6, 2025

/s/ Daniel Muino
Brian C. Nash (TX Bar No. 24051103)
Austin M. Schnell (TX Bar No. 24095985)
MORRISON & FOERSTER LLP
300 Colorado Street, Suite 1800
Austin, Texas 78701
Telephone: (512) 617-0650
Facsimile: (737) 910-0730
bnash@mofo.com
aschnell@mofo.com

Daralyn J. Durie (*pro hac vice*)
Rich S.J. Hung (*pro hac vice*)
Ian Bennett (*pro hac vice*)
Jenny Xin (*pro hac vice*)
MORRISON & FOERSTER LLP
425 Market St.
San Francisco, California 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522
ddurie@mofo.com
rhung@mofo.com
ibennett@mofo.com
jxin@mofo.com

Bradley S. Lui (*pro hac vice*)
Daniel P. Muino (*pro hac vice*)
MORRISON & FOERSTER LLP
2100 L Street, NW, Suite 900
Washington, DC 20037
Telephone: (202) 887-1500
Facsimile: (202) 887-0763
blui@mofo.com
DMuino@mofo.com

Amanda A. Potter (*pro hac vice*)
Malavika M. Fitzgerald (*pro hac vice*)
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
apotter@mofo.com
mfitzgerald@mofo.com

/s/ Mark Ford (by permission)
Melissa R. Smith
Texas Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM AND SMITH, LLP
303 South Washington Avenue
Marshall, TX 75670
(903)934-8450
Fax: (903)934-9257

James Travis Underwood
Texas Bar No. 24102587
travis@gillamsmithlaw.com
GILLAM AND SMITH, LLP
102 N. College, Suite 800
Tyler, TX 75702
(903) 934-8450
Fax: (903)934-9257

Joseph J. Mueller
Vinita Ferrera
Mark A. Ford
Marissa A. Lalli
Harry D. Hanson
Holly A. Ovington
Tyler L. Shearer
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
joseph.mueller@wilmerhale.com
vinita.ferrera@wilmerhale.com
mark.ford@wilmerhale.com
marissa.lalli@wilmerhale.com
harry.hanson@wilmerhale.com
holly.ovington@wilmerhale.com
tyler.shearer@wilmerhale.com

Omar A. Khan
WILMER CUTLER PICKERING
HALE AND DORR LLP
250 Greenwich Street
New York, NY 10007
(212) 230-8800

James M. Pearl (*pro hac vice*)
Emma Farrow (*pro hac vice*)
PAUL HASTINGS LLP
1999 Avenue of the Stars, 27th Floor
Los Angeles, California 90067
Telephone: (310) 620-5700
Facsimile: (310) 620-5899
jamespearl@paulhastings.com
emmafarrow@paulhastings.com

Stephen J. McIntyre (*pro hac vice*)
PAUL HASTINGS LLP
515 S. Flower Street, 26th Floor
Los Angeles, California 90071
Telephone: (213) 620-5700
Facsimile: (213) 620-5899
StephenMcIntyre@paulhastings.com

Thomas A. Counts (*pro hac vice*)
PAUL HASTINGS LLP
101 California Street, 48th Floor
San Francisco, California 94111
Telephone:(415) 856-7000
Facsimile: (415) 856-7100
tomcounts@paulhastings.com

Michael F. Murray (*pro hac vice*)
PAUL HASTINGS LLP
2050 M Street, N.W.
Washington, DC 20036
Telephone: (202) 551-1700
Facsimile: (202) 551-1705
michaelmurray@paulhastings.com

Adam M. Reich (*pro hac vice*)
PAUL HASTINGS LLP
71 South Wacker Drive, 45th Floor
Chicago, Illinois 60606
Telephone: (312) 499-6000
Facsimile: (312) 499-6100
adamreich@paulhastings.com

Attorneys for Plaintiff and Counterclaim Defendant Align Technology, Inc.

omar.khan@wilmerhale.com

R. Gregory Israelsen
Jonathan P. Knight
Gerard A. Salvatore
Robert B. Stiller
Todd C. Zubler
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 663-6000
greg.israelsen@wilmerhale.com
jonathan.knight@wilmerhale.com
jerry.salvatore@wilmerhale.com
robert.stiller@wilmerhale.com
todd.zubler@wilmerhale.com

Hannah Santasawatkul
Texas State Bar No. 24107617
WILMER CUTLER PICKERING
HALE AND DORR LLP
1225 17th Street, Suite 2600
Denver, Colorado 80202
(720) 274-3135
hannah.santasawatkul@wilmerhale.com

Attorneys for Defendants and Counterclaim-Plaintiffs ClearCorrect Operating, LLC ClearCorrect Holdings, Inc., Straumann USA LLC

Attorneys for Defendant Institut Straumann AG

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2025, a true and correct copy of the foregoing document was served on all counsel of record via the Court's CM/ECF Electronic Filing System.

/s/ Daniel Muino
Daniel P. Muino

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ALIGN TECHNOLOGY, INC., Plaintiff, v. CLEARCORRECT OPERATING, LLC, CLEARCORRECT HOLDINGS, INC., INSTITUT STRAUMANN AG, & STRAUMANN USA, LLC Defendants.	
CLEARCORRECT OPERATING, LLC, CLEARCORRECT HOLDINGS, INC., & STRAUMANN USA, LLC, Counterclaim-Plaintiffs, v. ALIGN TECHNOLOGY, INC., Counterclaim-Defendant.	Case No. 6:24-cv-00187-ADA-DTG

[PROPOSED]
FOURTH SCHEDULING ORDER

Align Proposal	ClearCorrect Proposal	Item
6/13/25		Deadline for parties to identify additional ESI custodians.
7/18/25	6/20/25	Deadline for Align to narrow its asserted patent claims to no more than 100 claims.
6/27/25		Deadline for parties to finalize search terms for additional ESI custodians.
8/1/25	7/11/25	Substantial completion deadline for document production.[1]
8/2/25	n/a	Deadline for ClearCorrect to narrow its prior art references to 6 references per patent family.
8/22/25	8/4/25	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to infringement contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.
9/1/25	n/a[2]	Substantial completion of customer contract production.
9/12/25		Substantial completion deadline for document production for additional ESI custodians.
9/25/25	8/29/25	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
10/2/25	10/2/25	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerk to arrange a teleconference with the Court to resolve the disputed issues.
10/17/25	10/7/25	Close of Fact Discovery.
11/14/25	11/6/25	Opening Expert Reports.
12/17/25	12/9/25	Rebuttal Expert Reports.
1/21/2025	1/13/26	Close of Expert Discovery.
2/3/26	1/20/26	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court's law clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.

[1] The parties commit to begin rolling productions in good faith and as soon as practicable.
[2] Under ClearCorrect's proposal, Align's customer contract production would be due on the substantial completion date, i.e. July 11, 2025.

Align Proposal	ClearCorrect Proposal	Item
2/6/26	1/27/26	Dispositive motion deadline and *Daubert* motion deadline. Deadline for parties desiring to consent to trial before the magistrate judge to submit Form AO 85, "Notice, Consent, And Reference Of A Civil Action To A Magistrate Judge," available at https://www.uscourts.gov/forms/civilforms/notice-consent-and-reference-civil-action-magistratejudge.
3/6/26	2/10/26	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, deposition designations).
3/11/26	2/24/26	Serve objections to pretrial disclosures/rebuttal disclosures.
		Oppositions to MSJs and Daubert Motions
3/13/26	3/2/26	Parties to jointly email the Court's law clerk (See OGP at 1) to confirm their pretrial conference and trial dates.
3/20/26	3/3/26	Serve objections to rebuttal disclosures; file motions *in limine*.
4/1/26	3/17/26	Replies in Support of MSJs and Daubert
4/8/26	3/24/26	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, deposition designations); file oppositions to motions *in limine*. From this date onwards, the parties are obligated to notify the Court of any changes to the asserted patents or claims. Such notification shall be filed on the docket within seven (7) days of the change and shall include a complete listing of all asserted patents and claims. If a change to the asserted patents or claims requires leave of court (for example, if a party is moving for leave to assert additional claims), notification shall not be required until the Court grants leave, at which point the notification must be filed within seven (7) days.
4/10/26	3/31/26	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to file replies to motions *in limine*.
4/17/26	4/7/26	Deadline to meet and confer regarding remaining objections and disputes on motions *in limine*.
4/21/26	4/9/26	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions *in limine*.

Align Proposal	ClearCorrect Proposal	Item
4/24/26	4/14/26	Final Pretrial Conference. Held in person unless otherwise requested.
5/4/26		Jury Selection/Trial.[3]

SIGNED this _____ day of _____, 2025.

_____
DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE

[3] If the actual trial date materially differs from the Court's default schedule, the Court will consider reasonable amendments to the case schedule post-*Markman* that are consistent with the Court's default deadlines in light of the actual trial date.