

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

3D DIAGNOSTIX, INC.,
Petitioner,

v.

WATSON GUIDE IP LLC,
Patent Owner.

Case PGR2024-00040
U.S. Patent No. 11,806,209

**SUPPLEMENTAL DECLARATION OF
DOUGLAS ERICKSON, D.D.S., M.S.
IN SUPPORT OF PETITIONER'S REPLY BRIEF**

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I, Dr. Douglas Erickson of Minneapolis, Minnesota, declare as follows:

I. INTRODUCTION AND BACKGROUND

1. I have been retained as a technical expert by Petitioner to study and provide my independent opinions on the technology claimed in U.S. Patent No. 11,806,209 (the “’209 Patent”) and the issue of patentability of the ’209 Patent claims. I am competent to testify under oath, and will do so if called as a witness, as follows herein.

2. I previously submitted a declaration as Exhibit 1003 to Petitioner’s Petition. I adopt that declaration in support of Petitioner’s Petitions, submitted on July 18, 2024, and provide further opinions, and bases therefor, stated herein.

3. To the extent Patent Owner or its expert attempt to rely on additional testimony of any inventor or its own expert(s) or other evidence in support of its positions, I reserve the right to comment on and respond to any of that testimony and evidence, and to supplement my opinions as permitted. I also reserve the right to provide additional background testimony, including testimony about the state of the art related to the ’209 patent and/or to offer additional opinions in this proceeding if requested or if necessary to respond to additional positions taken by Patent Owner or its expert(s) in this proceeding.

4. I am still being compensated for my time at a rate of \$550 per hour. My compensation is in no way contingent on the substance of my opinions or the outcome of the proceeding.

5. In addition to the materials identified in my declaration marked as Exhibit 1003, I have reviewed the Declaration of Patent Owner's expert, Dr. Jeffrey A. Elo, (Ex. 2007), the Declaration of Alan Banks (Ex. 2006), and the deposition transcripts of Dr. Elo (Ex. 1047) and Mr. Banks (Ex. 1046), and considered the additional materials referenced herein.

6. I may rely upon these materials and/or additional materials to rebut arguments raised by the Patent Owner and its expert(s). Further, I may also consider adding additional documents and information in forming any necessary opinions—including documents I may not yet have reviewed and documents that have not yet been provided to me.

7. My analysis of the materials relating to this proceeding is ongoing and I will continue to review any new material as it is provided. My earlier declaration (Exhibit 1003) and this supplemental declaration represent only those opinions I have formed to date. I reserve the right to revise, supplement, and/or amend my opinions based on new information and on my continuing analysis of the materials referred to herein and in my earlier declaration.

II. CONSTRUCTION OF CLAIM TERMS

8. I understand that Patent Owner has proposed constructions for two claim terms of the '209 Patent:

<u>Claim term</u>	<u>Claims</u>	<u>PO's Proposed Construction</u>
"mouthpiece"	1, 7, 17	a device that is inserted into the mouth and worn over the teeth
"configured and dimensioned to surround at least a portion of the teeth of the patient"	1, 7, 17	configured and dimensioned to enclose at least some teeth of the patient

9. In my opinion, these proposed constructions are not necessary, as the terms are readily understandable to a POSA according to their plain and ordinary meanings. Additionally, PO's proposals are inconsistent with how a POSA would understand the terms, especially in light of the patent specification and file history.

A. "mouthpiece"

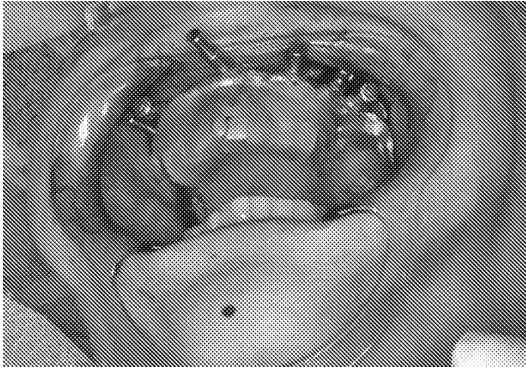
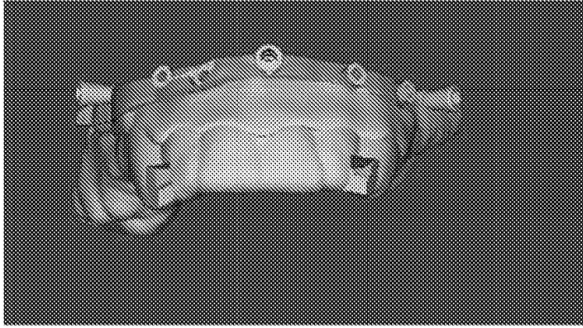
10. In paragraph 39 of his declaration, Dr. Elo states that the term "mouthpiece" as used in the dentistry field refers to a structure like a "mouth guard" that is used to protect athletes, and that is worn over the teeth. I disagree with this opinion. In my experience, the term "mouthpiece" does not have any particular meaning within dentistry, and might be used for a variety of different devices that are placed in the mouth. For example, Henry Schein—a well-known reseller of dental and medical equipment—lists 29 different items in its online

catalog with the keyword “mouthpiece.” Ex. 1038. None of these items appear to be worn over the teeth of a patient, as Dr. Elo agrees. Ex. 1047, 35:2-13.

11. In paragraph 41 of his declaration, Dr. Elo cites one definition of “mouthpiece” from the American Heritage Dictionary (related to sports) to support his opinion, but Dr. Elo does not cite the more general definition provided there of “a part...that functions in or near the mouth.” Ex. 2009. Dr. Elo does not cite other dictionaries whose definitions of mouthpiece are consistent with this broader one, nor does Dr. Elo provide any reason why the American Heritage sports definition is preferable to dentists over other dictionaries’ definitions. Dr. Elo does not cite the Merriam-Webster Online Dictionary or Websters, which I cited in my opening Declaration as defining “mouthpiece” with no reference to teeth. Ex. 1003, ¶148; Ex. 1045. Dr. Elo also does not cite any dental or medical dictionaries.

12. Dr. Elo also does not cite the file history of the ’209 patent, including U.S. Provisional Patent Application No. 62/508,377, which includes different types of “mouthpieces,” including one that is a “tooth borne guide” that goes over the teeth and one that is a “tissue borne guide” or a “denture clone” that is used with edentulous patients. Ex. 1005, 4, 6, 22, 24, 28. The tissue borne guide does not go over the teeth of the patient, but instead is attached to the fixation base and placed as the patient’s regular denture normally would sit, and is then put into occlusion with the opposite teeth, in order to more precisely position the fixation base. In my

opinion, a POSA reading the '209 patent and its file history (including the '377 provisional application) would understand that a “mouthpiece” is not limited to devices that are “worn over the teeth.”

 <p>EX1005, FIG. 2c (excerpt)</p> <p>Tooth Borne Guide</p>	<p>FIG 2b.</p>  <p>EX1005, FIG. 2b</p> <p>Tissue Borne Guide / Denture Clone</p>
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13. Accordingly, it is my opinion that a POSA would not agree with Patent Owner’s proposed construction of “mouthpiece”. Rather, a POSA might consider any dental device placed in the mouth to be a “mouthpiece.”

B. “configured and dimensioned to surround at least a portion of the teeth of the patient”

14. I understand that Patent Owner proposes construing the term “configured and dimensioned to surround at least a portion of the teeth of the patient” with “configured and dimensioned to enclose at least some teeth of the

patient.” That is, Patent Owner wishes to substitute the word “enclose” for “surround.” I see no reason for such a substitution.

15. I am not aware of any particular meaning to the words “enclose” and “surround” in dentistry, or any noticeable difference between their meanings. In my opinion, a POSA would understand these terms are synonymous. I understand that Dr. Elo agrees with this opinion. Ex. 1047, 38:22-41:6.

III. SECONDARY INDICIA OF NONOBVIOUSNESS

16. I understand Patent Owner contends that additional “objective indicia” demonstrate that the Challenged Claims of the ’209 patent are not obvious. I have reviewed the Declarations of Dr. Elo and Mr. Banks regarding these indicia. Ex. 2006, ¶¶3-18; Ex. 2007, ¶¶ 102-105.

17. Mr. Banks testifies that “CHROME GuidedSmile is a system and method for installing a multi-tooth dental prosthesis for the maxillary or mandibular jaw in a patient’s mouth.” Ex. 2006, ¶8. Mr. Banks then describes what he refers to as “The CHROME GuidedSmile product,” and that it is marked with the ’209 patent. *Id.* However, in reviewing online literature for GuidedSmile, there appears to be a family of different products under the “GuidedSmile” name, rather than a single product. Ex. 1024. Mr. Banks confirmed this in his deposition. Ex. 1046, 13:16-16:3.

18. I am aware that at least one such product in the GuidedSmile family, the GuidedSmile Lite product, has been made with a variation including a sequential pin guide, rather than a “stackable” pin guide. Exs. 1027-1029; Ex. 1046, 67:6-69:11, 69:17-71:2. The sequential pin guide does not attach to a fixation base, but instead is only used for placement of pin positions that are subsequently used for one or more unattached guides. Because the Challenged Claims of the ’209 patent recite that the mouthpiece is attached to the fixation base, it is my opinion that a sequential pin guide that does not attach to the fixation base is not covered by these claims, and thus this variation of the GuidedSmile product is not covered.

19. I am aware that GuidedSmile continues to include in its family of products two types of pin guides that are used to set a fixation base. First, there is a “dentate pin guide” that fits over the patient’s teeth. Second, there is an “edentulous pin guide” for use on patients who have no teeth. The edentulous pin guide replicates the patient’s denture and is adapted for attaching the fixation base. The attached fixation base is positioned when the edentulous pin guide is placed in the patient’s mouth and the pin guide is then put into occlusion with the opposite teeth. Ex. 1025; Ex. 1030; Ex. 1046, 50:6-11, 52:13-54:22.

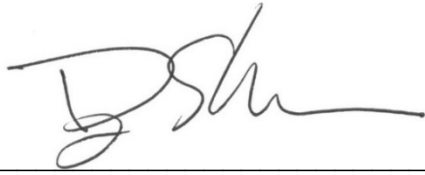
20. During prosecution the Patent Owner distinguished Llop126 as not being “configured and dimensioned to surround teeth of the patient” because there

are no teeth to utilize.” Ex. 1002, 167. In light of this history and applying this same rationale here, it is my opinion that Patent Owner’s edentulous pin guide cannot be a mouthpiece that is configured and dimensioned to surround teeth of the patient (“because there are no teeth to utilize”), and thus is not covered by the Challenged Claims of the ’209 patent.

21. The GuidedSmile Lite product in the GuidedSmile family appears to be a product that uses traditional plastic components rather than metal or other strong material, including a plastic fixation base and a plastic drill guide. Exs. 1024-1027. Under the Petitioner’s proposed constructions of “drill guide” and “fixation base” as being “without traditional plastic or acrylic” (which I believe is the proper construction, as I opined in my earlier declaration, Ex. 1003, ¶¶50-67), the GuidedSmile Lite would not be covered by the Challenged Claims of the ’209 patent.

IV. ACKNOWLEDGMENTS

I, Douglas M. Erickson, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and current.



Executed on July 16, 2025