

**From:** [Trials](#)  
**To:** [Agarwal, Isha](#); [Trials](#)  
**Cc:** [Toft, Lukas](#); [Chen, Joe](#); [Zhu, Jin](#); [Biegler, Geoff](#); [Shear, Chad](#); [z/Ascleitis-Coniupro PGR2025-00057](#)  
**Subject:** RE: PGR2025-00057 - Patent Owner's Request for Additional Briefing  
**Date:** Monday, August 17, 2026 4:50:07 PM  
**Attachments:** [image001.png](#)

---

Counsel,

The Board authorizes the parties to file supplemental briefing on the following issues:

1. Whether the holding of *Dental Monitoring SAS v. Align Tech., Inc.*, No. 2025-1752, 2026 WL 2291181 (Fed. Cir. Aug. 10, 2026) should be applied to this proceeding, including whether Patent Owner has waived arguments with respect to Su's prior art status;
2. Whether Su qualifies as prior art under *Dental Monitoring*; and
3. If Su were determined not to be prior art, how such determination would affect each asserted ground of invalidity.

The parties may also, but need not, address the above issues during the oral argument on Monday August 31, 2026. Petitioner shall file its supplemental brief no later than Tuesday, Sept. 8, 2026. Patent Owner shall file its supplemental brief no later than Tuesday, Sept. 15, 2026. Each party's supplemental brief is limited to ten (10) pages. No other relief is granted at this time.

Regards,

Andrew Kellogg,  
Deputy Chief Clerk, Trials  
Patent Trial and Appeal Board  
USPTO  
[andrew.kellogg@uspto.gov](mailto:andrew.kellogg@uspto.gov)  
(571) 272-5366



---

**From:** Agarwal, Isha <iagarwal@cooley.com>

**Sent:** Friday, August 14, 2026 4:09 PM

**To:** Trials <Trials@USPTO.GOV>

**Cc:** Toft, Lukas <ltoft@foxrothschild.com>; Chen, Joe <joechen@foxrothschild.com>; Zhu, Jin <jzhu@foxrothschild.com>; Biegler, Geoff <gbiegler@cooley.com>; Shear, Chad <Cshear@cooley.com>; z/Ascletois-Conjupro\_PGR2025-00057 <zAscletoisConjuproPGR202500057@cooley.com>

**Subject:** PGR2025-00057 - Patent Owner's Request for Additional Briefing

**CAUTION:** This email has originated from a source outside of USPTO. **PLEASE CONSIDER THE SOURCE** before responding, clicking on links, or opening attachments.

Dear Honorable Members of the Board,

Patent Owner respectfully writes to seek an order directing the parties to submit additional briefing on the prior art status of Petitioner's primary prior art reference in Grounds 1, 3, and 4, WO2025026270A1 ("Su"), in light of the Federal Circuit's recent precedential decision in *Dental Monitoring SAS v. Align Tech., Inc.*, No. 2025-1752, 2026 WL 2291181 (Fed. Cir. Aug. 10, 2026) (attached).

**Patent Owner's Position:** Prior to *Dental Monitoring*, the Board held in a precedential decision that when challenging a patent governed by the AIA and relying on the filing date of a provisional application, "a [prior art] patent document need only meet the 'ministerial requirements' of §§ 119 and 120, and the provisional or other earlier application(s) to which the [prior art] patent document claims a right of priority must 'describe[] the subject matter relied' upon in the [prior art] patent as prior art." *Penumbra Inc. v. Rapidpulse, Inc.*, IPR2021-01466, 2023 WL 2605070 (PTAB Mar. 10, 2023). The Federal Circuit's *Dental Monitoring* decision, decided just days ago, rejected the *Penumbra* standard and held that a patent challenger must satisfy the standard under *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375 (Fed. Cir. 2015), by showing that the provisional application provides §112 support for at least one claim of the patent or patent publication. Under *Dynamic Drinkware*, the petitioner bears the burden of showing that the prior art patent document is entitled to the filing date of its provisional application. 800 F.3d at 1378.

In this PGR, Petitioner asserts that Su is prior art to the '236 patent because it claims priority to provisional application CN2023113726058 ("Su II"). (Pet., 26.) Patent Owner respectfully requests that the Board order further briefing on this issue, as it presents a threshold question of prior art eligibility for at least three grounds in the petition. Because Petitioner bears the burden of proof on this issue, Patent Owner respectfully requests that the Board order Petitioner to file an opening brief on this issue, not to exceed 5 pages, with Patent Owner filing a response of equal length within seven days.

**Petitioner's Position:** Petitioner strongly objects to Patent Owner's email as "contain[ing] substantive argument" in violation of the Board's Order. (See Paper 17 at 2 (stating "[t]he

email may not contain substantive argument and, unless otherwise authorized, may not include attachments”).) Petitioner asserts the *Dental Monitoring* case does not impact this case for several reasons and therefore additional briefing is not necessary.

The parties have met and conferred. Petitioner opposes Patent Owner’s request. If it would be helpful to the Board, the parties will be prepared to discuss this request during the pre-hearing conference call on Monday, August 17 or anytime between 11am and 5pm ET on Tuesday, August 18.

Thank you,  
Isha Agarwal

**Isha Agarwal**

Cooley LLP  
1299 Pennsylvania Avenue, NW, Suite 700  
Washington, DC 20004-2400  
+1 202 776 2102 office  
+1 202 842 7899 fax  
+1 771 233 6752 mobile  
[iagarwal@cooley.com](mailto:iagarwal@cooley.com)

---

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. If you are the intended recipient, please be advised that the content of this message is subject to access, review and disclosure by the sender’s Email System Administrator.