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**Datasheet for the decision
of 7 April 2021**

Case Number: T 1313/19 - 3.2.08

Application Number: 08762816.0

Publication Number: 2155101

IPC: A61C7/00

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR DETECTING DEVIATIONS DURING THE COURSE
OF AN ORTHODONTIC TREATMENT TO GRADUALLY REPOSITION TEETH

Applicant:

Align Technology, Inc.

Relevant legal provisions:

RPBA 2020 Art. 13(2)

Keyword:

Amendment after expiry of period in R. 100(2) EPC
communication - exceptional circumstances (no)



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Case Number: T 1313/19 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 7 April 2021

Appellant: Align Technology, Inc.
(Applicant) 2820 Orchard Parkway
San Jose, CA 95134 (US)

Representative: Brookes IP
Windsor House
6-10 Mount Ephraim Road
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 30 October 2018
refusing European patent application No.
08762816.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman P. Acton
Members: G. Buchmann
C. Schmidt

Summary of Facts and Submissions

- I. With the decision posted on 30 October 2018, the examining division refused European patent application No. 08762816.0.

The examining division held that the subject-matter of claim 1 according to the then valid (sole) main request did not fulfil the requirements of Articles 84 and 123(2) EPC.

- II. The applicant filed an appeal against that decision.

- III. In the notice of appeal, the appellant requested that the decision under appeal be set aside and a patent be granted. The appellant also requested oral proceedings.

With a letter of 24 March 2021, the appellant withdrew its request for oral proceedings and requested a decision on the state of the file.

- IV. State of the File

(a) With the grounds of appeal, the appellant filed a new main request and an auxiliary request.

(b) On 29 May 2020 the Board summoned the appellant to oral proceedings and issued a communication under Rule 100(2) EPC indicating that the main request appeared not to be allowable under Articles 84 and 123(2) EPC and that the auxiliary request appeared not to be allowable under Article 123(2) EPC.

(c) With a letter of 3 August 2020, the appellant filed a new (sole) main request, which was based on the

former auxiliary request and included original claim 4 in claim 1.

- (d) On 21 August 2020 the Board issued a second communication, indicating that claim 1 appeared not to be allowable under Articles 84 and 123(2) EPC.

The appellant was advised of the provisions of Article 13(2) RPBA 2020.

- (e) With a letter of 10 December 2020, the appellant filed a new main request and auxiliary requests 1-3.

Apart from the "sincere hope that the Appeal Board will accept them into the proceedings", the appellant presented no reason why the newly filed requests should be admitted, let alone cogent reasons as required by Article 13(2) RPBA 2020.

- (f) On 21 January 2021 the Board issued a third communication, indicating that the new requests of 10 December 2020 were not taken into consideration by the Board under Article 13(2) RPBA 2020.

- (g) With a letter of 17 March 2021, the appellant filed a new (sole) main request without giving any reasons why this request should be admitted under Article 13(2) RPBA 2020. Apart from further amendments to claim 1, the new set of claims contains additional claims 2, 12, 13 and 14.

- (h) With a letter of 24 March 2021, the appellant withdrew its request for oral proceedings and requested a decision on the state of the file.

Reasons for the Decision

1. With the letter of 17 March 2021, the appellant filed a single main request. With this action, it abandoned all previous requests. This new request was filed after the summons to oral proceedings issued on 29 May 2020 for 22 April 2021. Its admission is thus governed by Article 13(2) RPBA 2020, which stipulates that: "Any amendment to a party's appeal case made ... after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned."

2. The letter of 17 March 2021 contained no reasoning with respect to the admittance of the new request.

Therefore, the request filed on 17 March 2021 is not admitted into the proceedings pursuant to Article 13(2) RPBA 2020.

3. Consequently, no valid request is on file on which a positive decision of the Board could be based.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated