

Filed on behalf of:

Petitioner

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

3SHAPE A/S and 3SHAPE INC.,
Petitioner,

v.

ALIGN TECHNOLOGY, INC.,
Patent Owner.

Case IPR2021-01383
Patent 10,728,519

DECLARATION OF BRYAN J. CANNON

3SHAPE 1027
3Shape v Align
IPR2021-01383

I, BRYAN J. CANNON, HEREBY DECLARE

1. I am an attorney duly licensed to practice law in the Commonwealth of Virginia. I am a patent attorney registered to practice before the U.S. Patent and Trademark Office. I am an attorney at the law firm of Troutman Pepper Hamilton Sanders LLP. This declaration is based upon my personal knowledge of the matters set forth herein.

2. I submit this declaration with Petitioner's Petition for *Inter Partes* Review of U.S. Patent No. 10,728,519 being filed concurrently herewith. The purpose of this declaration is to authenticate Exhibits 1015, 1019, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1039, and 1040.

3. **Exhibit 1015** is a true and correct copy of the Joint Claim Construction Statement filed August 2, 2021 in Case No. 6:20-cv-00979-ADA (W.D. Tex.) [Docket No. 139], as retrieved from the Court's public docket.

4. **Exhibit 1019** is a true and correct copy of Joint Agreed and Disputed Claim Constructions served by email on May 29, 2018 in U.S. International Trade Commission Investigation No. 337-TA-1091.

5. **Exhibit 1029** is a true and correct copy of the docket for Case No. 1:20-cv-01492-LPS (D. Del.) as retrieved from PACER on August 18, 2021.

6. **Exhibit 1030** is a true and correct copy of the Stipulated Stay of Proceedings filed on December 8, 2020 in Case No. 1:20-cv-01492-LPS (D. Del.) [Docket No. 21], as retrieved from the Court's public docket.

7. **Exhibit 1031** is a true and correct copy of the docket for Case No. 6:20-cv-00979-ADA (W.D. Tex.) as retrieved from PACER on August 18, 2021.

8. **Exhibit 1032** is a true and correct copy of analytics available through Lex Machina regarding the pending case load for patent cases before Judge Alan D. Albright in the Western District of Texas. The analytics shown in Exhibit 1032 were retrieved by querying Lex Machina for patent cases before Judge Albright between January 1, 2017 and June 11, 2021 (*i.e.*, approximately the last four years).

9. **Exhibit 1033** is a true and correct copy of the Joint Status Report filed September 14, 2018 in Case No. 1:17-cv-01646-LPS (D. Del.) [Docket No. 66], as retrieved from the Court's public docket.

10. **Exhibit 1034** is a true and correct copy of the Stipulation of Partial Dismissal filed on April 27, 2020 in Case No. 1:18-cv-01949-LPS (D. Del.) [Docket No. 67], as retrieved from the Court's public docket.

11. **Exhibit 1035** is a true and correct copy of the Letter to Honorable Leonard P. Stark filed November 24, 2020 in Case No. 1:18-cv-01949-LPS (D. Del.) [Docket No. 186], as retrieved from the Court's public docket.

12. **Exhibit 1036** is a true and correct copy of the Joint Stipulation filed on April 2, 2021 in Case No. 6:20-cv-00979-ADA (W.D. Tex.) [Docket No. 102], as retrieved from the Court's public docket.

13. **Exhibit 1037** is a true and correct copy of Plaintiff and Counterclaim Defendant Align Technology, Inc.'s Amended List of Asserted Claims served by email on June 1, 2021 in Case No. 6:20-cv-00979-ADA (W.D. Tex.).

14. **Exhibit 1039** is a true and correct copy of the Preliminary Constructions emailed August 19, 2021 to Counsel of Record in Case No. 6:20-cv-00979-ADA (W.D. Tex.).

15. **Exhibit 1040** is a true and correct copy of the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond dated March 1, 2019 in U.S. International Trade Commission Investigation No. 337-TA-1091 (PUBLIC VERSION filed July 15, 2019), as retrieved from the ITC's public docket.

16. I hereby declare under penalty of perjury that the foregoing is true and correct, that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and may jeopardize the validity of the application or any patent issuing

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Declaration of Bryan J. Cannon

thereon. If called to testify as to the truth of the matters stated herein, I could and would testify competently.

Dated: August 20, 2021

/Bryan J. Cannon/
Bryan J. Cannon, Reg. No. 72,877