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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALIGN TECHNOLOGY, INC. Petitioner

v.

3SHAPE A/S Patent Owner

Case No. PGR2018-00103 Patent 9,962,244

PATENT OWNER'S PRELIMINARY RESPONSE TO THE PETITION FOR POST-GRANT REVIEW OF U.S. PATENT NO. 9,962,244

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		ir fr	formation for the block of said image sensor pixels om at least one of the 2D images used to derive the urface geometry information"			
		a.	Fisker's disclosure of "scanning" of a surface shape and color relates to a general process of obtaining image data, not to the selection of a specific 2D image			
		b	Fisker's disclosure of "simultaneous scanning" and "scanned together" to obtain surface shape and color relates to Fisker's general process of scanning, not the selection of a specific 2D image12			

		c.	"Simultaneous scanning" cannot mean obtaining surface geometry and color at the same single moment in time because "simultaneous scanning" encompasses obtaining multiple images at <i>varying</i> times			
		d.	Nothing in the '244 Specification indicates that "simultaneous scanning" would somehow result in deriving surface geometry and surface color information from the same 2D image			
	2.	Petitioner fails to explain how and why Fisker's Fig. 9 embodiment would have been combined with Fisker's white light embodiment to somehow arrive at the claimed invention				
		a.	The Fig. 9 embodiment of Fisker does not produce a "multichromatic probe light" as claimed19			
		b.	Petitioner fails to explain how and why Fisker's Fig. 9 embodiment would have been combined with Fisker's white light embodiment			
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C.	Fiske Suzu 7), ar	tioner Fails to Establish that It Is More Likely than Not that ker, Szeliski, and Yamada (Ground 5), Fisker, Szeliski, and uki (Ground 6), Fisker, Matsumoto, and Yamada (Ground and Fisker, Matsumoto, and Suzuki (Ground 8) render claim Obvious				
D.	Petitioner Fails to Establish that It Is More Likely than Not tha Thiel425, Thiel576, and Szeliski (Ground 9) and Thiel425, Thiel576, and Matsumoto (Ground 10) Render Claims 1, 22, and 24 Obvious.					
	1.	Neither Thiel425 nor Thiel576 discloses or suggests "the data processing system also configured to <i>derive surface color information</i> for the block of said image sensor pixels <i>from at least one of the 2D images used to derive the surface geometry information</i> "				
		a.	Petitioner concedes that Thiel425 does not disclose deriving surface color information from a 2D image			
		b.	Thiel576 does not disclose or suggest deriving both surface geometry information and surface color information from the same at least one 2D image			
	2.		ould not have been obvious to combine Thiel425 and 1576 to arrive at the claimed subject matter			
		a.	Petitioner and its expert cite to no evidence, underlying facts, or data which demonstrate that the missing claim limitation would have been obvious			
		b.	Petitioner fails to explain how and why a POSITA would have modified Thiel425 with the teachings of Thiel576 to arrive at the claimed invention			
	3.		ski and Matsumoto fail to cure the deficiencies of 1425 and Thiel57641			

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		4.	Dependent claims 22 and 24 would not have been obvious over the alleged combination of Thiel425 and Thiel576 with either Szeliski or Matsumoto	42			
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