

DENTAL MONITORING SAS v. ALIGN TECHNOLOGY, INC., Appeal No. 2025-1752 (Fed. Cir. Aug. 10, 2026). Before Lourie, Schall, and Taranto. Appealed from the Patent Trial and Appeal Board.

Background:

Dental Monitoring owns a patent directed to a method for acquiring and analyzing an image of a dental arch using a deep learning device. Align petitioned for IPR, and the PTAB held the claims of that patent unpatentable as obvious over a combination of references including "Carrier." The effective filing date of the challenged patent falls between the filing date of Carrier's provisional application and the filing date of Carrier's non-provisional application, so Carrier qualified as prior art only if entitled to its provisional filing date. The PTAB held that a reference receives the benefit of an earlier filing date so long as the reference claims priority to the earlier application and the earlier application describes the subject matter relied upon. Because Carrier satisfied both requirements, the PTAB accorded Carrier the provisional filing date. Dental Monitoring appealed.

Issues/Holdings:

Did the PTAB err in its rationale for considering Carrier to be prior art as of the provisional filing date? Yes, vacated and remanded.

Discussion:

35 U.S.C. § 102(d)(2) provides that a patent or published application reference is effectively filed as of an earlier application's filing date if it "is entitled to claim a right of priority under § 119" and the earlier application describes the subject matter relied upon. In a previous decision, *Dynamic Drinkware*, decided under pre-AIA § 102(e), the Federal Circuit had required that the provisional application provide written description support for at least one of the reference's claims. Align argued that *Dynamic Drinkware* does not govern AIA cases, and that § 102(d), which speaks of the "subject matter" described in the earlier application rather than of claims, requires only that a priority claim to the earlier application be properly made. Align also argued that the claim-support requirement serves no practical purpose because a provisional application becomes publicly accessible once the non-provisional application publishes, regardless of whether any claim is supported.

The Federal Circuit disagreed. *Dynamic Drinkware* reserved the § 102(d) question rather than holding that the AIA abrogated the claim-support requirement. The Federal Circuit held that "entitled to" incorporates the substantive requirements of § 119, not merely the procedural mechanics of claiming priority, and reasoned that a contrary reading would render "entitled to" superfluous. Because § 119(e)(1) requires that the invention (i.e., the claims) disclosed in the later application be disclosed in the provisional in the manner provided by § 112(a), the statutory text requires § 112(a) support for at least one claim of the reference before the reference may obtain the earlier filing date for prior art purposes. The Federal Circuit resolved the question on the statutory text alone and did not address Align's practical argument.

Because the PTAB made no findings on whether Carrier's provisional application supports at least one of Carrier's claims, the Federal Circuit remanded for that determination.