

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

3SHAPE A/S,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 18-886-LPS
	:	CONSOLIDATED
ALIGN TECHNOLOGY, INC.,	:	
	:	
Defendant.	:	

MEMORANDUM ORDER

WHEREAS, Magistrate Judge Hall issued an Oral Order (the “Order”) (D.I. 333), dated January 9, 2021, denying 3Shape’s requests to (i) strike two paragraphs of Dr. Singh’s expert report and (ii) preclude Align’s use of two documents in this case (*see* D.I. 331 at 1);

WHEREAS, on January 25, 2021, 3Shape objected to the Order (the “Objections”) (D.I. 344), contending that the Order misapplied the *Pennypack* factors, *see Meyers v. Pennypack Woods Home Ownership Ass’n*, 559 F.2d 894, 904-05 (3d Cir. 1977);

WHEREAS, the Court has reviewed 3Shape’s Objections relating to the Order for abuse of discretion, *see* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); *see also Norguard Ins. Co. v. Serveon Inc.*, 2011 WL 344076, at *2 (D. Del. Jan. 28, 2011) (“In discovery matters, decisions of the magistrate judge are given great deference and will be reversed only for an abuse of discretion.”) (cited in Objections at 5-6);


NOW, THEREFORE, IT IS HEREBY ORDERED that 3Shape’s Objections are OVERRULED and the Order is ADOPTED.

1. There is nothing close to an abuse of discretion here. To the contrary, the Court finds that Judge Hall appropriately applied the *Pennypack* factors. The prejudice is minimal;

Align did not raise a previously-undisclosed invalidity theory based on the documents at issue. Additionally, any potential prejudice can be cured by inspection of source code, deposition of experts, and rebuttal expert reports – all of which have not been shown to be particularly burdensome, and none of which will disrupt trial, which has not yet been scheduled. Align has provided a reasonable explanation for the timing of its disclosures, including that the documents only became important after 3Shape’s expert stated in a rebuttal report that comments in Align’s source code and the date of folder path (both of which were timely produced) were not reliable.

2. The Court finds it appropriate to rule on the Objections without awaiting a response from Align. When a decision of a magistrate judge is going to be reviewed under a deferential abuse of discretion standard – and particularly when it has been the subject of briefing consisting of short letter briefs – parties should carefully consider whether it is a wise use of resources (theirs, opposing counsel’s, and the Court’s) to file 10-page briefs seeking a district judge’s review.

February 1, 2021
Wilmington, Delaware



HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE