

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INCREMENTAL DENTAL
POSITIONING ADJUSTMENT
APPLIANCES AND METHODS OF
PRODUCING SAME**

Inv. No. 337-TA-562
(Enforcement Proceeding)

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AND REVERSE AN
INITIAL DETERMINATION OF THE PRESIDING ADMINISTRATIVE LAW JUDGE;
TERMINATION OF THE ENFORCEMENT PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and reverse an initial determination (“ID”) (Order No. 57) of the presiding administrative law judge in the above-captioned enforcement proceeding. The enforcement proceeding is hereby terminated.

FOR FURTHER INFORMATION: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on February 15, 2006, based on a complaint filed by Align Technology, Inc. (“Align”) of Santa Clara, California (now of San Jose, California). 71 *Fed. Reg.* 7995-96. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain incremental dental positioning adjustment appliances by reason of infringement of certain claims of U.S. Patent Nos. 6,685,469; 6,450,807 (“the ‘807 patent”); 6,394,801; 6,398,548; 6,722,880 (“the ‘880 patent”); 6,629,840; 6,699,037; 6,318,994; 6,729,876; 6,602,070; 6,471,511 (“the ‘511 patent”); and 6,227,850. The

complaint also alleged a violation of section 337 by reason of misappropriation of trade secrets. The Commission's notice of investigation named OrthoClear, Inc. of San Francisco, California; OrthoClear Holdings, Inc. of Tortola, British Virgin Islands; and OrthoClear Pakistan Pvt, Ltd. of Lahore, Pakistan as respondents. On July 11, 2006, the ALJ granted Align's motion to terminate the investigation as to the '807 patent, which the Commission determined not to review. Order No. 10 (July 11, 2006), Notice of Non-Review (July 20, 2006).

On November 13, 2006, the Commission issued notice of its determination not to review the presiding administrative law judge's initial determination granting Align's and respondents' joint motion to terminate the investigation as to respondents (and in its entirety) based on a consent order. The consent order prohibits the importation, sale for importation, and sale in the United States after importation of incremental dental positioning adjustment appliances referenced in the complaint and any other articles manufactured in violation of the asserted patents or trade secrets.

On March 1, 2012, Align filed a complaint for an enforcement proceeding under Commission Rule 210.75, and filed a corrected complaint on March 22, 2012. On April 25, 2012, the Commission determined that the criteria for institution of an enforcement proceeding were satisfied and instituted an enforcement proceeding, naming the following six respondents: ClearCorrect USA of Houston, Texas; ClearCorrect Pakistan (Private), Ltd. ("ClearCorrect Pakistan") of Lahore, Pakistan; and Mudassar Rathore, Waqas Wahab, Nadeem Arif, and Asim Waheed (the "bound officers"). *77 Fed. Reg. 25747* (May 1, 2012). The complaint for enforcement, as corrected, asserts that the successors and bound officers of the original respondents have violated the November 13, 2006, consent order by the continued practice of prohibited activities such as importing, offering for sale, and selling for importation into the United States of articles that infringe the '511 and '880 patents. According to the complaint for enforcement, the imported items are digital datasets, which are used to manufacture dental appliances. The notice of institution of an enforcement proceeding noted the threshold issue of whether the accused digital datasets are within the scope of the consent order sought to be enforced, and indicated that the ALJ may wish to consider this issue at an early date.

On November 28, 2012, the ALJ issued Order No. 57, addressing whether the accused digital datasets are articles within the meaning of the consent order. On December 21, 2012, the Commission issued a notice recognizing that Order No. 57 is an ID provided for in the notice of institution of an enforcement proceeding and that the deadline for determining whether to review the ID is January 14, 2013.

On December 6, 2012, respondents filed a petition for review of the ID. On December 13, 2012, complainant and the Commission investigative attorney filed responses.

Having examined the petitions for review, the responses thereto, and the relevant portions of the record, the Commission has determined to review and reverse the subject ID because the subject consent order did not contain an express provision prohibiting the electronic transmission of data. The Commission's determination is dispositive of complainant's claims, and as such, the Commission terminates the enforcement proceeding with a finding of no violation of the consent order. An opinion will follow.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: January 4, 2013