

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INTRAORAL SCANNERS
AND RELATED HARDWARE AND
SOFTWARE**

Investigation No. 337-TA-1090

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW
AN INITIAL DETERMINATION TERMINATING THE INVESTIGATION WITH
RESPECT TO CERTAIN ASSERTED CLAIMS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 26) of the presiding administrative law judge (“ALJ”), granting complainant’s unopposed motion for partial termination of the investigation with respect to certain asserted claims.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. 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 SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 this investigation on December 19, 2017, based on a complaint filed on behalf of Align Technology, Inc. (“Align”) of San Jose, California. 82 FR 60215 (Dec. 19, 2017). The complaint alleges 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, or the sale within the United States after importation of certain intraoral scanners and related hardware and software by reason of infringement of one or more claims of U.S. Patent No. 9,615,901; U.S. Patent No. 8,638,448 (“the ’448 patent”); U.S. Patent No. 8,638,447 (“the ’447 patent”); U.S. Patent No. 6,845,175 (“the ’175 patent”); and U.S. Patent No. 6,334,853 (“the ’853 patent”). *Id.* The complaint further alleges that a

domestic industry exists. The Commission's notice of investigation named as respondents 3Shape A/S of Copenhagen K, Denmark; and 3Shape, Inc., of Warren, New Jersey. The notice of investigation has been amended to add 3Shape Trios A/S of Copenhagen, Denmark as a new respondent. 83 FR 13782 (Mar. 30, 2018). The Office of Unfair Import Investigations is not participating in the investigation.

The asserted claims of the '853 patent and other asserted claims have been terminated from the investigation. *See* Order No. 7 (Mar. 7, 2018), *not reviewed by* Comm'n Notice (Mar. 26, 2018); Order No. 13 (Apr. 19, 2018), *not reviewed by* Comm'n Notice (May 17, 2018); Order No. 20 (Jun. 26, 2018), *not reviewed by* Comm'n Notice (Jul. 18, 2018).

On August 3, 2018, Align filed an unopposed motion to withdraw its allegations of infringement as to all asserted claims of the '175 patent, claims 1-7, 10 and 12 of the '447 patent, and claim 1 of the '448 patent. On August 14, 2018, the ALJ issued the subject ID granting the motion. *See* Order No. 26 at 2 (Aug. 14, 2018). The ALJ found that the requirements of Commission Rule 210.21(a)(1) have been met and that no extraordinary circumstances prevent granting the motion. *Id.* No petitions for review were filed.

The Commission has determined not to review the subject ID.

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 CFR 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
Secretary to the Commission

Issued: August 30, 2018