

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington D.C. 20436

In the Matter of

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

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) **Inv. No. 337-TA-562**
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**NOTICE OF A COMMISSION DETERMINATION TO AFFIRM ON REVIEW A
PORTION OF AN INITIAL DETERMINATION GRANTING COMPLAINANT'S
MOTION FOR SUMMARY DETERMINATION STRIKING AN
AFFIRMATIVE DEFENSE OF INVALIDITY**

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm on review a portion of an initial determination ("ID") of the presiding administrative law judge ("ALJ") in the above-captioned investigation granting complainant's motion for summary determination striking an affirmative defense of invalidity.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., telephone 202-708-2310, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. Copies of all nonconfidential 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, 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-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 15, 2006, based on a complaint filed by Align Technology, Inc. of Santa Clara, California. The complaint alleges violations of section 337 of the Tariff Act of 1930, 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; 6,394,801; 6,398,548; 6,722,880; 6,629,840; 6,699,037; 6,318,994; 6,729,876; 6,602,070; 6,471,511; and

6,227,850. The complaint further alleged a violation of section 337 by reason of misappropriation of trade secrets. 71 *Fed. Reg.* 7995 (February 15, 2006). The complaint named three respondents: OrthoClear, Inc. of San Francisco, CA; OrthoClear Holdings, Inc. of the British Virgin Islands; and OrthoClear Pakistan Pvt., Ltd. of Pakistan (collectively, “OrthoClear”). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On July 20, 2006, the Commission determined not to review an ID terminating the investigation as to U.S. Patent No. 6,450,807.

On April 14, 2006, complainant Align filed a motion for summary determination striking affirmative defenses of invalidity based on the doctrine of assignor estoppel. On May 16, 2006, the ALJ issued an ID granting Align’s motion. On May 23, 2006, respondent OrthoClear filed a petition for review of the ID. On May 31, 2006, complainant Align filed its opposition to OrthoClear’s petition. On June 2, 2006, the Commission investigative attorney (“IA”) filed her response in opposition to OrthoClear’s petition.

On June 30, 2006, the Commission issued a notice determining to review-in-part the ID to the extent that the ALJ determined that the Commission IA is not prohibited by the order from challenging the validity of the patents-in-suit, and requested briefing on the issue from all parties. The Commission determined not to review any other part of the ID, thereby affirming the ALJ’s summary determination striking the respondents’ affirmative defense of invalidity based on assignor estoppel.

On July 14, 2006, the Commission IA and respondent OrthoClear filed briefs in support of the ALJ determination allowing the Commission IA to challenge patent validity, and complainant Align filed a brief in opposition to the ALJ determination. On July 21, 2006, OrthoClear filed a reply to Align’s and the IA’s submissions and complainant Align filed a reply to OrthoClear’s and the Commission IA’s submissions.

Having reviewed the record in this investigation, including the ID and the parties’ written submissions, the Commission has determined to affirm the portion of the ID that is under review.

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 sections 210.42 and 210.45 of the Commission’s Rules of Practice and Procedure (19 C.F.R. §§ 210.42, 210.45).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: August 7, 2006