

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 RECOGNIZE ORDER NO. 57 AS
AN INITIAL DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE
PURSUANT TO THE NOTICE OF INSTITUTION OF THE ENFORCEMENT
PROCEEDING AND THAT THE DEADLINE FOR DETERMINING WHETHER TO
REVIEW THE INITIAL DETERMINATION IS JANUARY 14, 2013**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission recognizes that Order No. 57 is an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-identified investigation as provided for in the notice of institution of the enforcement proceeding and that the deadline for determining whether to review that ID pursuant thereto is January 14, 2013.

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 importing, offering for sale, and selling for importation in the United States incremental dental positioning adjustment appliances and any other articles that infringe the asserted patents or that contain or use the asserted trade secrets.

On March 1, 2012, Align filed a complaint for enforcement proceedings 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 enforcement proceedings were satisfied and instituted enforcement proceedings, naming the following six proposed 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 articles include digital datasets.

The notice of institution of the enforcement proceeding provided that: “In instituting this enforcement proceeding, the Commission has not made any determination as to whether such digital datasets are within the scope of the consent order sought to be enforced. Accordingly, the presiding administrative law judge may wish to consider this issue at an early date. Any such decision should be issued in the form of an initial determination (“ID”) under Commission rule 210.42(c), 19 C.F.R. § 210.42(c). The ID will become the Commission’s final determination 45 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission rules 210.43, 210.44, and 210.45, 19 C.F.R. §§ 210.43, 210.44, and 210.45.”

On November 28, 2012, the ALJ issued Order No. 57: Finding that the Accused Digital Datasets Are Within the Scope of the Term “Articles” As It Appears in the Consent Order. Order No. 57 is an ID, as provided for in the notice of institution of the enforcement proceeding, which also provided 45 days for the Commission to determine whether to review that ID. Accordingly, the deadline for determining whether to review the ID is January 14, 2013.

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". The signature is stylized with large, flowing loops and a prominent initial "L".

Lisa R. Barton
Acting Secretary to the Commission

Issued: December 21, 2012