

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

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

**Investigation No. 337-TA-562
(Enforcement Proceeding - Remand)**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION TERMINATING THE INVESTIGATION ON THE BASIS OF A
SETTLEMENT AGREEMENT; TERMINATION OF INVESTIGATION**

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 the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 76) granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. 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 at <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 patents. 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 November 13, 2006, the Commission issued notice of its determination not to review the ALJ's initial determination granting Align's and the respondents' joint motion to terminate the investigation based on a consent order.

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, which were alleged to be bound by the consent order: ClearCorrect Operating, LLC of Houston, Texas; ClearCorrect Pakistan (Private), Ltd. of Lahore, Pakistan; and Mudassar Rathore, Waqas Wahab, Nadeem Arif, and Asim Waheed ("Enforcement Respondents"). *77 Fed. Reg.* 25747 (May 1, 2012).

On November 28, 2012, the ALJ issued Order No. 57, and found that the accused digital datasets at issue in the enforcement proceeding fall within the scope of the term "articles" in the consent order. On January 4, 2013, the Commission determined to review and reverse Order No. 57. *78 Fed. Reg.* 2282-83 (Jan. 10, 2013). The Commission terminated the enforcement proceeding with a finding of no violation of the consent order. *Id.* Upon Align's appeal, the Federal Circuit held that Order No. 57 was not reviewable as an ID under the Commission's rules. *Align Tech., Inc. v. Int'l Trade Comm'n*, 771 F.3d 1317, 1324-25 (Fed. Cir. 2014). The Court vacated the Commission's determination to review and reverse Order No. 57, and remanded the case to the Commission for further proceedings consistent with the Court's opinion. *Id.* at 1326. On November 24, 2014, the Commission issued a notice to remand the investigation to the Chief Administrative Law Judge for assignment to a presiding ALJ to resume enforcement proceedings.

On April 6, 2015, Align and the Enforcement Respondents filed a joint motion to terminate the enforcement proceeding on the basis of an agreement between the parties. The Commission investigative attorney filed a response in support of the motion. On April 8, 2015, the ALJ granted the motion as the subject ID (Order No. 76). The ID found that granting the motion is in the public interest. Order No. 76 at 1-2; *see* 19 C.F.R. § 210.50(b)(2).

No petitions for review were filed. The Commission has determined not to review the ID. The Commission has terminated the investigation.

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.



Lisa R. Barton
Secretary to the Commission

Issued: May 6, 2015