

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MODELS, DIGITAL
DATA, AND TREATMENT PLANS FOR
USE, IN MAKING INCREMENTAL
DENTAL POSITIONING ADJUSTMENT
APPLIANCES MADE THEREFROM,
AND METHODS OF MAKING THE
SAME**

Inv. No. 337-TA-833

**NOTICE REGARDING INITIAL DETERMINATION ON VIOLATION OF SECTION
337 AND RECOMMENDED DETERMINATION ON REMEDY AND BOND**

(May 6, 2013)

On this date, I issued an initial determination on violation of section 337 and recommended determination on remedy and bond in the above-referenced investigation. Below are the conclusions of law from said filing, which are a matter of public record. A complete public version of the Initial Determination and Recommended Determination on Remedy and Bond will be issued when all the parties have submitted their redactions and I have had an opportunity to review the redactions.

CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction, *in rem* jurisdiction, and *in personam* jurisdiction.
2. There has been an importation into the United States, sale for importation, or sale within the United States after importation of the accused digital data sets, which are the subject of the alleged unfair trade allegations.

3. An industry does exist in the United States that exploits U.S. Pat. Nos. 6,217,325; 6,722,880; 8,070,487; 6,471,511; 6,705,863; and 7,134,874 as required by 19 U.S.C. § 1337(a)(2).

4. An industry does not exist in the United States that exploits U.S. Pat. No. 6,626,666 as required by 19 U.S.C. § 1337(a)(2).

5. Claims 1, 2, 3, 11, 13, 14, 21, 30, 31, 32, 33, 34, 35, 38, and 39 of U.S. Pat. No. 6,217,325 are not invalid pursuant to 35 U.S.C. §§ 102 and 103.

6. Claims 1 and 3 of U.S. Pat. No. 6,722,880 are not invalid pursuant to 35 U.S.C. §§ 102 and 103.

7. Claims 1, 3, 5, 7, 8, and 9 of U.S. Pat. No. 8,070,487 are not invalid pursuant to 35 U.S.C. §§ 102 and 103.

8. Claim 1 of U.S. Pat. No. 6,471,511 is not invalid pursuant to 35 U.S.C. §§ 102 and 103.

9. Claims 1, 3, 7, and 9 of U.S. Pat. No. 6,626,666 are not invalid pursuant to 35 U.S.C. §§ 102 and 103.

10. Claims 1, 4, 5, 6, 7, and 8 of U.S. Pat. No. 6,705,863 are not invalid pursuant to 35 U.S.C. §§ 102 and 103.

11. Claims 1, 2, 38, 39, 41, and 62 of U.S. Pat. No. 7,134,874 are not invalid pursuant to 35 U.S.C. §§ 102 and 103.

12. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, infringe claims 1, 2, 3, 11, 13, 14, 21, 30, 31, 32, 33, 34, 35, 38, and 39 of U.S. Pat. No. 6,217,325.

13. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, infringe claims 1 and 3 of U.S. Pat. No. 6,722,880.

14. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, infringe claims 1, 3, and 5 of U.S. Pat. No. 8,070,487.

15. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, do not infringe claims 7, 8, and 9 of U.S. Pat. No. 8,070,487.

16. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, infringe claim 1 of U.S. Pat. No. 6,471,511.


17. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, infringe claims 1, 3, 7, and 9 of U.S. Pat. No. 6,626,666.

18. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, infringe claims 1, 4, 5, 6, 7, and 8 of U.S. Pat. No. 6,705,863.

19. The accused digital models, digital data sets, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and the methods of making the same, infringe claims 1, 2, 38, 39, 41, and 62 of U.S. Pat. No. 7,134,874.

20. There is a violation of 19 U.S.C. § 1337(a)(1)(B) with respect to U.S. Pat. Nos. 6,217,325; 6,722,880; 8,070,487; 6,471,511; 6,705,863, and 7,134,874.

SO ORDERED.



Robert K. Rogers, Jr.
Administrative Law Judge

**CERTAIN DIGITAL MODELS, DIGITAL DATA, AND
TREATMENT PLANS FOR USE IN MAKING
INCREMENTAL DENTAL POSITIONING ADJUSTMENT
APPLIANCES, THE APPLIANCES MADE THEREFROM,
AND METHODS OF MAKING SAME**

Inv. No. 337-833

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** was served upon **Vu Bui, Esq.**,
Commission Investigative Attorney, and the following parties via first class mail delivery on

MAY - 6 2013



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, D.C. 20436

FOR COMPLAINANT ALIGN TECHNOLOGY, INC.:

Scott M. Flicker, Esq.
PAUL HASTINGS LLP
875 15th Street, NW
Washington, DC 20005

() Via Hand Delivery
(☒) Via Overnight Mail
() Via First Class Mail
() Other: _____

FOR RESPONDENT CLEARCORRECT OPERATING, LLC:

Gary M. Hnath, Esq.
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006

() Via Hand Delivery
(☒) Via Overnight Mail
() Via First Class Mail
() Other: _____

FOR CLEARCORRECT PAKISTAN (PRIVATE), LTD.:

Lei Mei, Esq.
MEI & MARK LLP
818 18th Street NW
Suite 410
Washington, DC 20006

() Via Hand Delivery
(☒) Via Overnight Mail
() Via First Class Mail
() Other: _____

**CERTAIN DIGITAL MODELS, DIGITAL DATA, AND
TREATMENT PLANS FOR USE IN MAKING
INCREMENTAL DENTAL POSITIONING ADJUSTMENT
APPLIANCES, THE APPLIANCES MADE THEREFROM,
AND METHODS OF MAKING SAME**

Inv. No. 337-833

PUBLIC CERTIFICATE OF SERVICE PAGE 2

PUBLIC MAILING LIST

Lori Hofer, Library Services
LEXIS – NEXIS
9473 Springboro Pike
Miamisburg, OH 45342

☐ Via Hand Delivery
☐ Via Overnight Mail
☒ Via First Class Mail
☐ Other: _____

Kenneth Clair
THOMAS WEST
1100 Thirteenth Street NW, Suite 200
Washington, DC 20005

☐ Via Hand Delivery
☐ Via Overnight Mail
☒ Via First Class Mail
☐ Other: _____