



July 18, 2014

## **Federal Circuit Sides With Align and Reverses the ITC's Termination of Align's Contract Case Against ClearCorrect's Former OrthoClear Employees for Violation of 2006 Consent Decree**

### **Separate 2014 Cease and Desist Orders Not Impacted**

SAN JOSE, CA -- (Marketwired) -- 07/18/14 -- Align Technology, Inc. (NASDAQ: ALGN) today announced that the Federal Circuit reversed the final determination issued by the International Trade Commission ("ITC") against Align in the '562 case (the "Enforcement Action"), in which the ITC held that Align's 2006 Consent Order with OrthoClear and certain individuals (including individuals involved with ClearCorrect Pakistan) did not cover importation by electronic transmissions because the order did not expressly mention electronic transmissions. ClearCorrect had attempted to rely on this technicality to avoid a trial on whether ClearCorrect and its former OrthoClear employees breached the Consent Order when they imported digital dental data from Pakistan to make ClearCorrect aligners. The Federal Circuit decision represents a total win for Align, who will now be able to proceed with its contract-based enforcement action, taking full advantage of the separate patent infringement findings from its related ITC infringement case against ClearCorrect.

First, the Federal Circuit agreed with Align that as a procedural matter, the ITC should never have reviewed (and reversed) Administrative Law Judge ("ALJ") Roger's ruling denying ClearCorrect's motion to terminate. The Federal Circuit held that such rulings are not reviewable by the ITC under the ITC's own rules until after the completion of the investigation, and that the ITC never waived its rule.

Second, because the Commission could on remand simply waive the regulation, reach the same result, and bounce the case back to the Federal Circuit, the court decided also to reach the substantive issue regarding the interpretation of the consent order. The Federal Circuit rejected the Commission's claim that the ITC had a historical practice of only permitting cease-and-desist orders prohibiting electronic transmissions if the orders mentioned such transmissions explicitly. The Court ruled that the language used by the parties in the 2006 Consent Order was adequate to prohibit importation by electronic transmission, and remanded the case to the ITC to determine at trial whether the former OrthoClear (now ClearCorrect) employees violated the Consent Order by admittedly transmitting digital dental data to ClearCorrect (a process the ITC has already found to infringe multiple Align patents). The Court did not reach the question of whether section 337 gives the ITC jurisdiction over electronic articles (an issue Align won with both the ALJ and the ITC and now the subject of a separate ClearCorrect appeal).

The case will now be remanded back to the ITC, who will presumably assign a new ALJ to handle the case going forward (ALJ Rogers has since retired). Align expects the new ALJ to set a status conference to discuss the schedule for further handling of the case.

#### **About Align Technology, Inc.**

Align Technology is the leader in modern clear aligner orthodontics that designs, manufactures and markets the Invisalign system, which provides dental professionals with a range of treatment options for adults and teenagers. The Company also offers the iTero 3D digital scanning system and services for orthodontic and restorative dentistry. Align Technology was founded in March 1997 and received FDA clearance to market Invisalign in 1998. Visit [www.aligntech.com](http://www.aligntech.com) for more information.

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