



May 8, 2013

## **ITC Initial Determination Recommends Cease and Desist Orders Against ClearCorrect Operating and ClearCorrect Pakistan**

SAN JOSE, CA -- (Marketwired) -- 05/08/13 -- Align Technology, Inc. (NASDAQ: ALGN) today announced that the Initial Determination of the International Trade Commission ("ITC") Administrative Law Judge (ALJ) recommends the entry of permanent cease and desist orders against ClearCorrect Operating, LLC, based in Houston, Texas and ClearCorrect Pakistan (Private) Ltd., based in Lahore, Pakistan. The recommendation, contained in the full Initial Determination first received by the parties on May 7, 2013, recommends the entry of cease and desist orders prohibiting ClearCorrect from using the infringing digital data, models and treatment plans prepared by ClearCorrect Pakistan to manufacture ClearCorrect aligners.

The Initial Determination specifically recommends that cease and desist orders be entered against both ClearCorrect entities, as well as all of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Initial Determination also specifically recommends that the cease and desist orders prohibit importation (electronically or otherwise) into the United States, the sale for importation, or the sale within the United States after importation of the digital models, digital data, and treatment plans used by ClearCorrect Operating LLC to make ClearCorrect aligners, any ClearCorrect aligners made using the models, data and treatment plans, and the use of the methods of making the ClearCorrect aligners that infringe one or more claims of the patents in suit.

"The presiding ALJ's recommendation that cease and desist orders be entered against both ClearCorrect USA and ClearCorrect Pakistan should send a clear message to infringers of Align's patents," said Roger E. George, Align Technology vice president and general counsel. "We are encouraged by the presiding ALJ's recommendation of permanent cease and desist orders and await the final determination by the full Commission on or before September 4, 2013."

The cease and desist orders are based on the finding that ClearCorrect infringes 37 "process" claims of the 40 total claims asserted by Align. As to the three remaining "product" claims, the ALJ found that these claims also cover ClearCorrect's treatment plans, but declined to find infringement based on a jurisdictional requirement. The ALJ found that although ClearCorrect's treatment plans infringe when they leave Pakistan as well as when they arrive in Houston, they technically do not infringe during the moment of electronic transmission from Pakistan to the US and are thus beyond the limited import jurisdiction of the ITC. Significantly, this jurisdictional requirement is unique to the ITC and does not apply to patent infringement actions brought in federal court, such as the action still pending between Align and ClearCorrect in the Southern District of Texas. In addition, because the ALJ found that certain process claims were infringed by ClearCorrect USA alone, moving the Pakistan operation to the US would not alter the ALJ's infringement analysis for many of the claims that ClearCorrect was found to infringe.

"Even the infringement of one claim would have entitled Align to the cease and desist remedy," stated George. "The finding of infringement of 37 claims, coupled with the finding that the remaining 3 claims also cover ClearCorrect's products, leaves no room for doubt as to the ALJ's conclusions regarding the nature of ClearCorrect's conduct."

On May 6 Align received notice that the ALJ had issued his Initial Determination finding that both ClearCorrect entities infringe all seven of the patents asserted by Align in the ITC investigation. The ALJ found that all 40 of the asserted claims contained in the seven asserted patents are valid, and that ClearCorrect infringes 37 of the 40 claims. The notice did not include the recommended remedy.

The final decision in this case, based on the deliberation of the full ITC Commission, is expected by September 4, 2013. Align's federal court patent infringement case in Houston against ClearCorrect Operating remains stayed pending the ITC process and remains an available remedy to Align should ClearCorrect attempt to use domestic technicians to provide its digital treatment services.

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

Align Technology designs, manufactures and markets Invisalign, a proprietary method for treating malocclusion, or the misalignment of teeth. Invisalign corrects malocclusion using a series of clear, nearly invisible, removable appliances that gently move teeth to a desired final position. Because it does not rely on the use of metal or ceramic brackets and wires, Invisalign significantly reduces the aesthetic and other limitations associated with braces. Invisalign is appropriate for treating adults and teens. Align Technology was founded in March 1997 and received FDA clearance to market Invisalign in 1998. The Invisalign

product family includes Invisalign, Invisalign Teen, Invisalign Assist, Invisalign Express 10, Invisalign Express 5, Invisalign Lite, and Vivera Retainers. To learn more about Invisalign or to find an Invisalign trained doctor in your area, please visit [www.invisalign.com](http://www.invisalign.com).

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