

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On August 4, 2020, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 25475, May 1, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.<sup>1</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

**Staff report.**—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on November 17, 2020, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.**—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party

other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before November 23, 2020 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 23, 2020. However, should the Department of Commerce ("Commerce") extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.**—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 18, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

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Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC (collectively, "domestic interested parties"), to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1144]

### Certain Dental and Orthodontic Scanners and Software; Commission's Final Determination Finding No Violation of Section 337; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, as amended. The investigation is hereby terminated.

#### FOR FURTHER INFORMATION CONTACT:

Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. 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 SW, Washington, DC 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 this investigation on March 5, 2019. 84 FR 7933–34 (March 5, 2019) based on a complaint filed on behalf of Align Technology, Inc. of San Jose, California ("Align"). The complaint alleges 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, or the sale within the United States after importation of certain dental and orthodontic scanners and software by reason of infringement of one or more claims of U.S. Patent Nos. 9,299,192 ("the '192 patent"); 7,077,647 ("the '647 patent"); 7,156,661 ("the '661 patent"); 9,848,958 ("the '958 patent"); and 8,102,538 ("the '538 patent"). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents

<sup>1</sup> A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

<sup>2</sup> The Commission has found the joint response to its notice of institution filed on behalf of domestic producers of citric acid and certain citrate salts,

3Shape A/S of Copenhagen, Denmark; 3Shape, Inc. of Warren, New Jersey; and 3Shape Trios A/S of Copenhagen, Denmark (together, “3Shape”). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

The Commission subsequently terminated the investigation with respect to the '958 patent based on Align's withdrawal of those complaint allegations. Order No. 17 (Jul. 2, 2019), *not reviewed* Notice (Jul. 23, 2019). On October 8, 2019, Align stated that it would no longer pursue a violation with respect to claims 4 and 20 of the '647 patent, claims 1 and 19 of the '661 patent, and claims 1, 3–5, and 22 of the '192 patent. On October 21, 2019, Align stated that it would no longer pursue a violation with respect to claim 2 of the '647 patent. Accordingly, at the time of the Final ID, Align asserted claims 1 and 18 of the '647 patent, claims 2 and 20 of the '661 patent, claims 1 and 2 of the '538 patent, and claims 2, 28, and 29 of the '192 patent.

On April 30, 2020, the ALJ issued the Final ID finding a violation of section 337 with respect to the '647 and '661 patents, and no violation with respect to the '538 and '192 patents. Specifically, the ALJ found that claims 1 and 18 of the '538 patent are not infringed and that claims 2, 28, and 29 of the '192 patent are invalid. The ALJ found that Align satisfied the remaining requirements for a violation with respect to the '538 and '192 patents.

On May 12, 2020, 3Shape and Align each filed a petition for review of the Final ID. On May 20, 2020, the parties responded to each other's petitions. The Commission also received four comments on the public interest.

On January 31, 2020, the Commission determined to review the Final ID in part. Specifically, the Commission determined to review the following issues: (1) The findings regarding importation and induced infringement; (2) the construction of limitation 1.5/18.5 of the '647 patent (“individually matching [match] each of the dental objects in the subsequent digital model with a dental object in the initial digital model to determine corresponding dental objects, the matching comprising [including instructions to]”) in the asserted claims of the '647 patent, and the application of that construction regarding infringement, invalidity, and the technical prong of the domestic industry; (3) the findings regarding whether the asserted claims of the '647 and '661 patents are directed to patentable subject matter; (4) the construction of the limitation “wherein the device is configured for maintaining a spatial disposition with respect to the

portion that is substantially fixed during operation of the optical scanner and imaging means” in the asserted claims of the '538 patent, and the application of that construction regarding infringement, invalidity, and the technical prong of the domestic industry requirement; (5) the findings regarding whether Okamoto anticipates the asserted claims of the '538 patent; (6) the findings regarding whether Paley-Kriveshko anticipates or renders obvious the asserted claims of the '192 patent; and (7) the findings regarding the satisfaction of the economic prong of the domestic industry requirement.

Having examined the record of this investigation, including the Final ID, the petitions, responses, and other submissions from the parties, the Commission has determined that Align has failed to show a violation of section 337. Specifically, the Commission has determined to: (1) Modify the Final ID's findings on importation; (2) reverse the Final ID's finding that Align showed induced infringement for the '647 and '661 patents; (3) modify the Final ID's interpretation of the limitation “to determine corresponding dental objects” in the asserted claims of the '647 patent, but find that the modification does not affect the application of the construction to infringement, the domestic industry, or invalidity; (4) take no position on the Final ID's finding that the asserted claims of the '647 and '661 patents are directed to patentable subject matter; (5) modify the ALJ's construction of “wherein the device is configured for maintaining a spatial disposition with respect to the portion that is substantially fixed during operation of the optical scanner and the imaging means” of the asserted claims of the '538 patent, and find that, under the modified construction, Align established infringement and the technical prong of the domestic industry requirement but that the asserted claims are invalid; (6) reverse the Final ID's finding that the asserted claims of the '538 patent are not anticipated by Okamoto; (7) reverse the Final ID's finding that the asserted claims of the '192 patent are not anticipated by Paley-Kriveshko, and affirm the Final ID's finding that the asserted claims are invalid as obvious under modified reasoning; and (8) take no position on whether Align satisfied the economic prong of the domestic industry requirement.

Accordingly, the Commission finds no violation of section 337. Specifically, the Commission finds that Align failed to establish a violation with respect to the asserted claims of the '647 and '661

patents because Align failed to show infringement; that Align failed to establish a violation with respect to the asserted claims of the '538 patent because Align failed to show infringement and because the claims are invalid; and that Align failed to establish a violation with respect to the asserted claims of the '192 patent because the claims are invalid. The Commission's determinations are explained more fully in the accompanying Opinion. All other findings in the ID under review that are consistent with the Commission's determinations are affirmed. The investigation is hereby terminated.

The Commission vote for these determinations took place on November 17, 2020.

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 CFR part 210).

By order of the Commission.

Issued: November 17, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to The National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on November 3, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), The Open Group, L.L.C. (“TOG”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3ES Innovation Inc., Calgary, CANADA; Asesorías y Desarrollos Corporativos S.A., San José, COSTA RICA; Asia eHealth Information Network, Kowloon, PEOPLE'S REPUBLIC OF CHINA; Atkins Limited, Epsom, UNITED KINGDOM; Bridewell Consulting Ltd, Reading, UNITED KINGDOM; Brunei Shell Petroleum Company Sendirian Berhad, Seria, BRUNEI; Chameleon