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Attorneys for Plaintiff ORMCO  
CORPORATION

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

ORMCO CORPORATION,

Plaintiff,

v.

INNOVATIVE MATERIAL AND  
DEVICES, LLC, INNOVATIVE  
MATERIAL AND DEVICES, INC.  
and ORTHO PRIME, INC.,

Defendant.

CASE NO. 8:16-cv-01925

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY DEMAND**

Trial Date: None Set

1 The Plaintiff,Ormco Corporation, for its complaint against Innovative  
2 Material and Devices, LLC, Innovative Material and Devices, Inc. and Ortho Prime,  
3 Inc., alleges as follows.

4  
5 **JURISDICTION AND VENUE**

6 1. This is an action for patent infringement and arises under the patent  
7 laws of the United States, title 35, United States Code. This court has subject matter  
8 jurisdiction pursuant to 28 U.S.C. §§ 1338(a) and 1331.

9 2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§  
10 1391(b)-(c) and 1400(b) as defendants have committed acts of patent infringement  
11 in this judicial district as alleged below.

12 **PARTIES**

13 3. Plaintiff Ormco Corporation (hereinafter, “Ormco”), is a corporation  
14 incorporated under the laws of the State of Delaware, having its principal place of  
15 business at 1717 W. Collins Ave., Orange, California 92867.

16 4. Defendant Innovative Material and Devices, Inc. (“IMD Inc.”) is a  
17 Chinese company located at Building 5, No. 615 Feng Deng Road, Jiading District,  
18 Shanghai, China.

19 5. Defendant Innovative Material and Devices, LLC (“IMD LLC”) is a  
20 Georgia limited liability company having its principal place of business at 6065  
21 Parkway North Dr., Cumming, Georgia, 30040.

22 6. Defendant Ortho Prime, Inc. (“Ortho Prime”) is a Georgia corporation  
23 having its principal address at 6065 Parkway North Dr., Cumming, Georgia, 30040.

24 **PATENTS IN SUIT**

25 7. U.S. Patent No. 7,416,408 B2 (the “408 patent”), entitled “Aesthetic  
26 Self-Ligating Orthodontic Bracket,” was duly issued on August 26, 2008 and is  
27 assigned to and owned by Ormco. A true and correct copy of the ‘408 patent is  
28 attached hereto as Exhibit A.

1 8. U.S. Patent No. 7,704,072 B2 (the “’072 patent”), entitled “Orthodontic  
2 Bracket,” was duly issued on April, 27, 2010 and is assigned to and owned by  
3 Ormco. A true and correct copy of the ‘072 patent is attached hereto as Exhibit B.

4 **GENERAL ALLEGATIONS**

5 9. IMD Inc. manufactures, and through various channels, offers for sale  
6 and sells in the United States self-ligating orthodontic brackets under the name  
7 “ProMIM” as seen at its website <http://en.imdmedical.com/>. The website identifies  
8 its United States contact as Perry Haque, a California resident who serves as its  
9 Director Global Sales, and a U.S. business address corresponding to that of IMD  
10 LLC and Ortho Prime.

11 10. Upon information and belief, IMD LLC is IMD Inc.’s arm in the  
12 United States and imports and/or offers for sale and sells ProMIM brackets in the  
13 United States, including in this judicial district.

14 11. Ortho Prime imports and/or offers for sale and sells ProMIM brackets.  
15 For example, Ortho Prime’s website displays the ProMIM bracket, see [http://ortho-](http://ortho-prime.myshopify.com/)  
16 [prime.myshopify.com/](http://ortho-prime.myshopify.com/) and contains a page for placing orders for the ProMIM  
17 brackets, see [http://ortho-](http://ortho-prime.myshopify.com/collections/brackets/products/promim-series-metal-bracket)  
18 [prime.myshopify.com/collections/brackets/products/promim-series-metal-bracket](http://ortho-prime.myshopify.com/collections/brackets/products/promim-series-metal-bracket).  
19 Ortho Prime’s website also publishes a catalog, excerpts of which are attached  
20 hereto as Exhibit C, which promotes the ProMIM bracket.

21 **COUNT I – INFRINGEMENT OF THE ‘408 PATENT**

22 12. Ormco realleges and incorporates by reference the allegations in the  
23 preceding paragraphs as though fully set forth herein.

24 13. Defendants have directly infringed and continue to infringe, literally or  
25 under the doctrine of equivalents, at least one claim of the ‘408 patent by making,  
26 selling, offering for sale and/or importing into the United States the ProMIM  
27 brackets without Ormco’s authorization to do so.



1           14. For example, claim 1 of the '408 patent claims:

2                   A self-ligating orthodontic bracket for coupling an  
3                   archwire with a tooth, the orthodontic bracket comprising:

4                   a bracket body including a lingual surface configured to be  
5                   mounted to a tooth, a groove, an archwire slot defined within  
6                   said groove, a first labial surface, a second labial surface  
7                   separated from said first labial surface by said groove, a pair of  
8                   guides on said first labial surface, and at least one first stop  
9                   element; and

10                  a ligating member retained by said guides to said bracket  
11                  body, said ligating member guided for movement by said guides  
12                  between an open position in which an archwire is insertable into  
13                  said archwire slot and a closed position in which said ligating  
14                  member retains the archwire in said archwire slot, said ligating  
15                  member including at least one second stop element that abuts  
16                  said at least one first stop element on said bracket body when  
17                  said ligating member is in said open position, and said ligating  
18                  member including a lingual surface overlying said archwire slot  
19                  when said ligating member is in said closed position, a labial  
20                  surface, and a leading edge between said lingual and labial  
21                  surfaces of said ligating member,

22                  wherein a portion of said second labial surface of said  
23                  bracket body projects at least partially above said lingual surface  
24                  of said ligating member, and said leading edge of said ligating  
25                  member has an abutting relationship, when said ligating member  
26                  is in said closed position, with a portion of said groove between  
27                  said portion of said second labial surface and said archwire slot.

28           15. The ProMIM bracket meets each and every limitation found in claim 1,

1 either literally or under the doctrine of equivalents. Subject to additional information  
2 obtained during discovery, the Court's construction of any patent claim terms the  
3 meaning of which the parties disagree, and the disclosure ofOrmco's final  
4 infringement contentions pursuant to any applicable rules or otherwise, the ProMIM  
5 brackets infringe the '408 patent as follows:

6 a. The ProMIM bracket is a self-ligating orthodontic bracket  
7 for coupling an archwire with a tooth. An image of a ProMIM  
8 bracket with its ligating member in the closed position (Fig. 1)  
9 and an image of a ProMIM bracket with its ligating member in  
10 the open position (Fig. 2) follows:



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19 Fig. 1



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28 Fig. 2

b. The ProMIM bracket comprises a bracket body including  
a lingual surface configured to be mounted to a tooth, a groove,  
an archwire slot defined within said groove, a first labial surface,  
a second labial surface separated from said first labial surface by  
said groove, a pair of guides on said first labial surface, and at  
least one first stop element. Each of these features is shown by  
the labeled images that follow.

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1. The image identified as Fig. 3 below shows the labial surfaces of a ProMIM bracket body from which the ligating member has been removed.

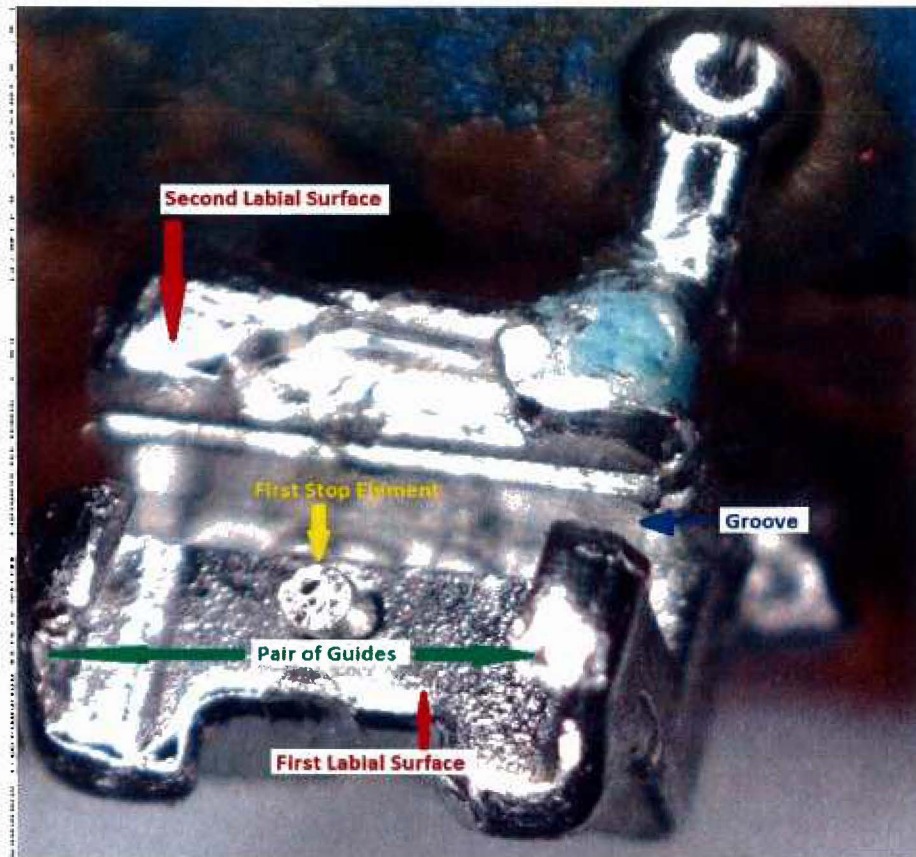


Fig. 3

2. The image identified as Fig. 4 below shows a sectioned view of a ProMIM bracket with its ligating member in place in the closed position, but the first stop member absent from its surrounding cavity, after cutting through the vertical mid-line from the labial to the lingual sides. The lingual surface of the bracket is at the bottom in this image.



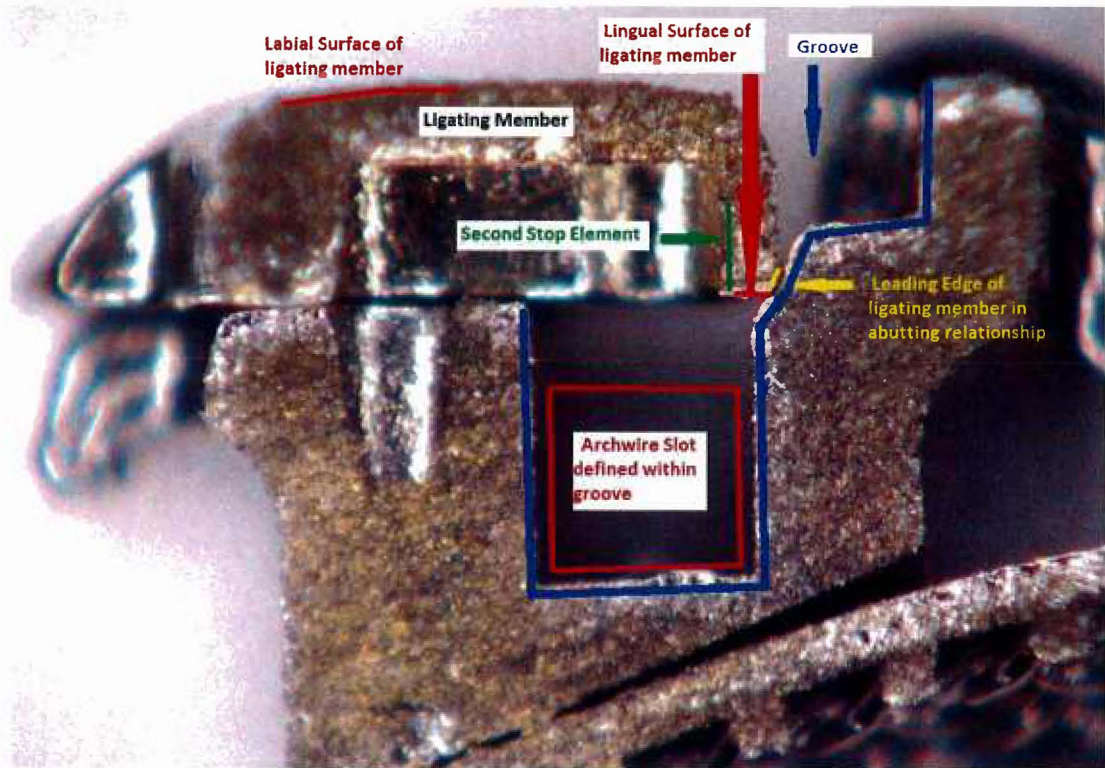
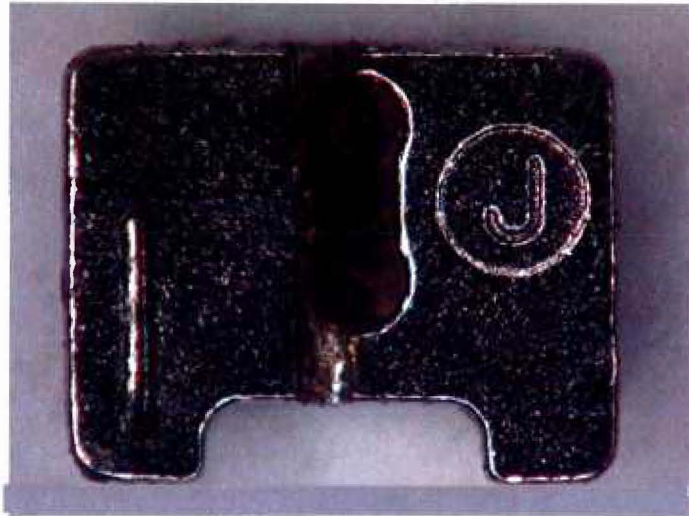


Fig. 4

c. The ProMIM includes a ligating member retained by said guides to said bracket body, said ligating member guided for movement by said guides between an open position in which an archwire is insertable into said archwire slot and a closed position in which said ligating member retains the archwire in said archwire slot, said ligating member including at least one second stop element that abuts said at least one first stop element on said bracket body when said ligating member is in said open position, and said ligating member including a lingual surface overlying said archwire slot when said ligating member is in said closed position, a labial surface, and a leading edge between said lingual and labial surfaces of said ligating member. These features are seen in the above image. An image of the ligating

1 member separately, as seen from its lingual surface, follows as  
2 Fig. 5.



12 Fig. 5

13 d. As can be seen in Fig. 6 below, a portion of said second  
14 labial surface of said bracket body projects at least partially  
15 above said lingual surface of said ligating member, and said  
16 leading edge of said ligating member has an abutting  
17 relationship, when said ligating member is in said closed  
18 position, with a portion of said groove between said portion of  
19 said second labial surface and said archwire slot.

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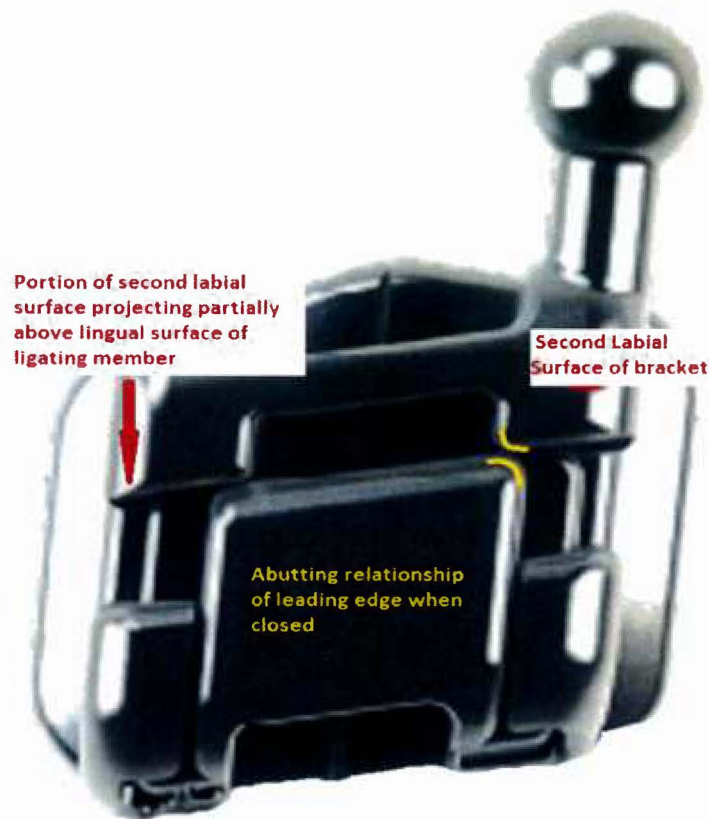


Fig. 6

16. Upon information and belief, Defendants' acts of direct infringement of the '408 patent were conducted with knowledge of the '408 patent and constitutes willful infringement, warranting a determination that defendants' infringement is egregious and warrants enhancement of damages and an award of attorney fees under 35 U.S.C. § 284.

## **COUNT II – INFRINGEMENT OF THE '072 PATENT**

17. Ormco realleges and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

18. Defendants have directly infringed and continue to infringe, literally or under the doctrine of equivalents, at least one claim of the '072 patent by making, selling, offering for sale and/or importing into the United States the ProMIM brackets without Ormco's authorization to do so.

1           19. For example, claim 1 of the '072 patent claims:

2                     An orthodontic bracket comprising:

3                     a base member defining an archwire slot, and having an  
4                     anterior and posterior facing surface and a bore is formed in the  
5                     base member and extends from the anterior facing surface in the  
6                     direction of the posterior facing surface;

7                     a ligating slide borne by the base member and moveable  
8                     between a first, open position which allows access to the  
9                     archwire slot, and a second, closed position which restricts  
10                    access to the archwire slot, and wherein the ligating slide has an  
11                    anterior and a posterior facing surface, and wherein a channel is  
12                    formed in the posterior facing surface of the ligating slide, and  
13                    wherein the channel has a first and second end, and wherein a  
14                    seat is defined at the first and second ends; and

15                    an elongated flexible member borne by the base member  
16                    and which has a proximal end which is received in the bore, and  
17                    a distal end which is received in the channel which is formed in  
18                    the posterior facing surface of the ligating slide, and wherein the  
19                    seat defined by the first and second ends of the channel are each  
20                    dimensioned to matingly receive the distal end of the flexible  
21                    member which extends anteriorly outwardly relative to the  
22                    anterior facing surface of the base member, and wherein the  
23                    flexible member is not substantially deformed when received in  
24                    the respective seats, and wherein the distal end of the elongated  
25                    flexible member is resiliently deformable along a path of travel  
26                    when the ligating slide moves between the first and second  
27                    positions and out of the respective seats and along the channel  
28                    defined in the posterior facing surface of the ligating slide, and

1 wherein the flexible member cooperates with the channel to  
2 releasably secure the ligating slide in the first and second  
3 positions.

4 20. The ProMIM bracket meets each and every limitation found in claim 1  
5 of the '072 patent, either literally or under the doctrine of equivalents. Subject to  
6 additional information obtained during discovery, the Court's construction of any  
7 patent claim terms the meaning of which the parties disagree, and the disclosure of  
8 Ormco's final infringement contentions pursuant to any applicable rules or  
9 otherwise, the ProMIM bracket infringes at least claim 1 of the '072 patent because  
10 it is an orthodontic bracket that comprises the following limitations of claim 1:

11 a. As shown in Fig. 7 below, ProMIM comprises a base  
12 member defining an archwire slot, and having an anterior and  
13 posterior facing surface and a bore is formed in the base member  
14 and extends from the anterior facing surface in the direction of  
15 the posterior facing surface.  
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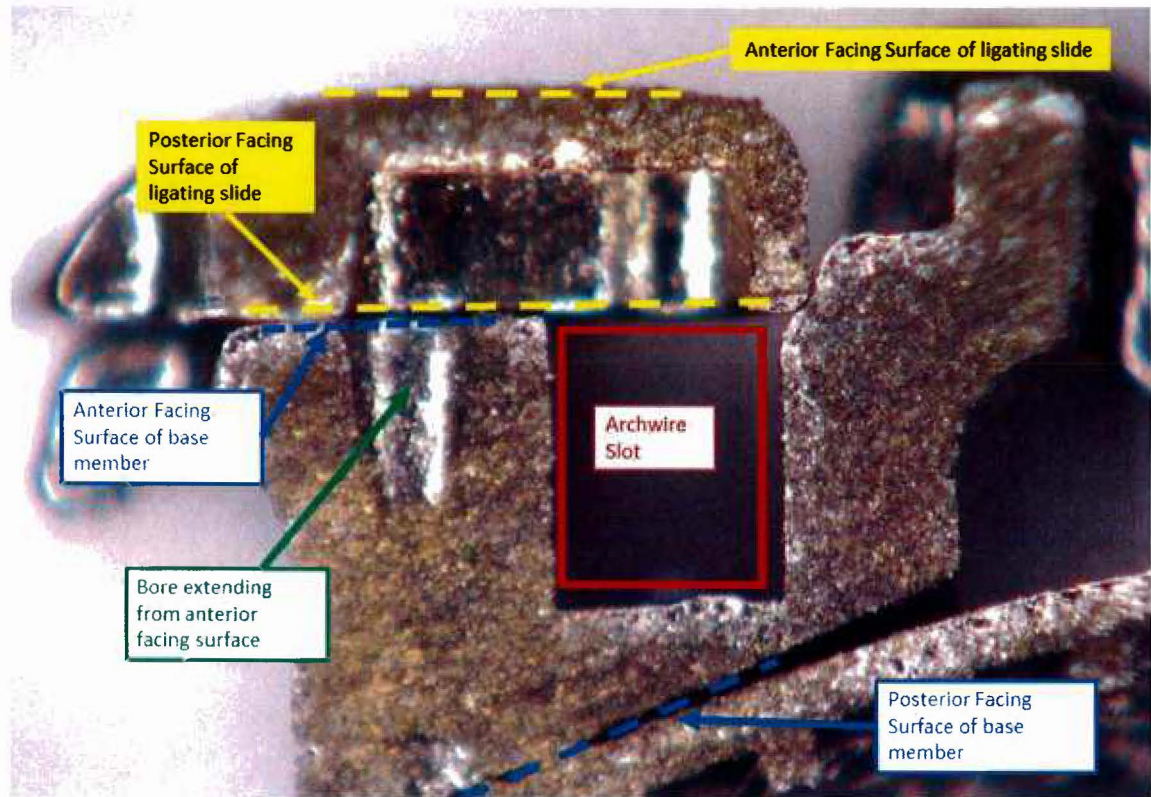
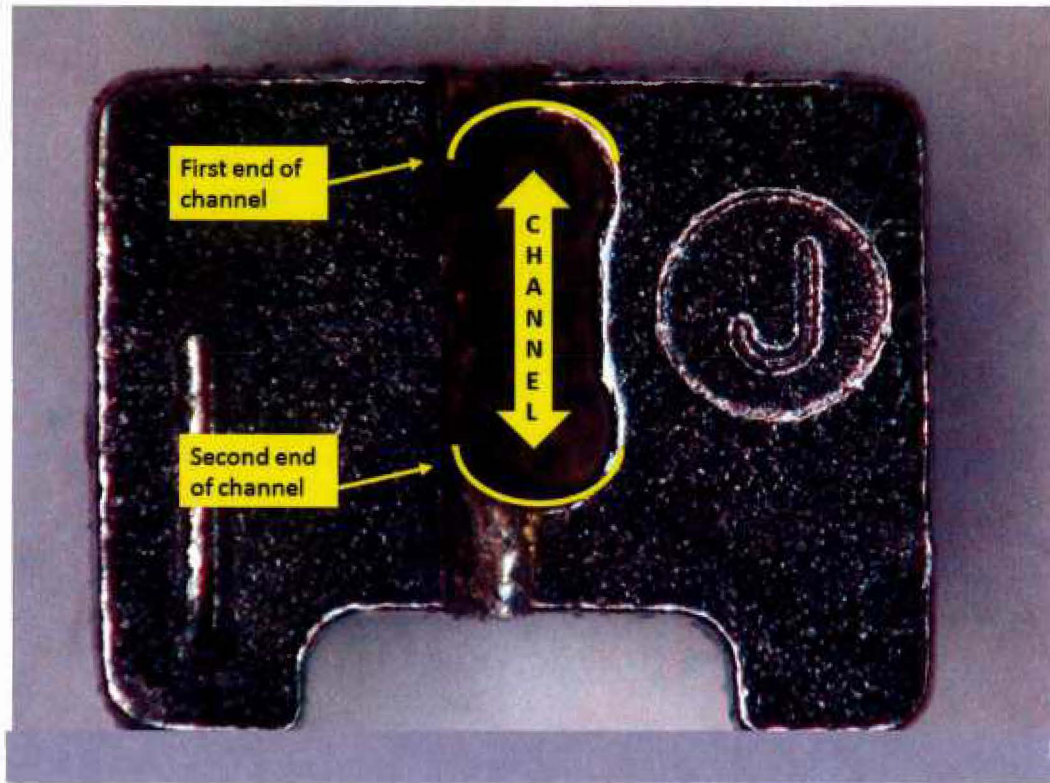


Fig. 7

b. ProMIM comprises a ligating slide borne by the base member and moveable between a first, open position which allows access to the archwire slot, and a second, closed position which restricts access to the archwire slot (see Figs. 1 and 2 above), and wherein the ligating slide has an anterior and a posterior facing surface (Fig. 7 above), and wherein a channel is formed in the posterior facing surface of the ligating slide, and wherein the channel has a first and second end, and wherein a seat is defined at the first and second ends. The channel is best shown in Fig. 8 below, showing the posterior facing surface of the ligating slide.



14 Fig. 8

15 c. ProMIM comprises an elongated flexible member borne  
16 by the base member and which has a proximal end which is  
17 received in the bore, and a distal end which is received in the  
18 channel which is formed in the posterior facing surface of the  
19 ligating slide, as shown in Fig. 9 below.  
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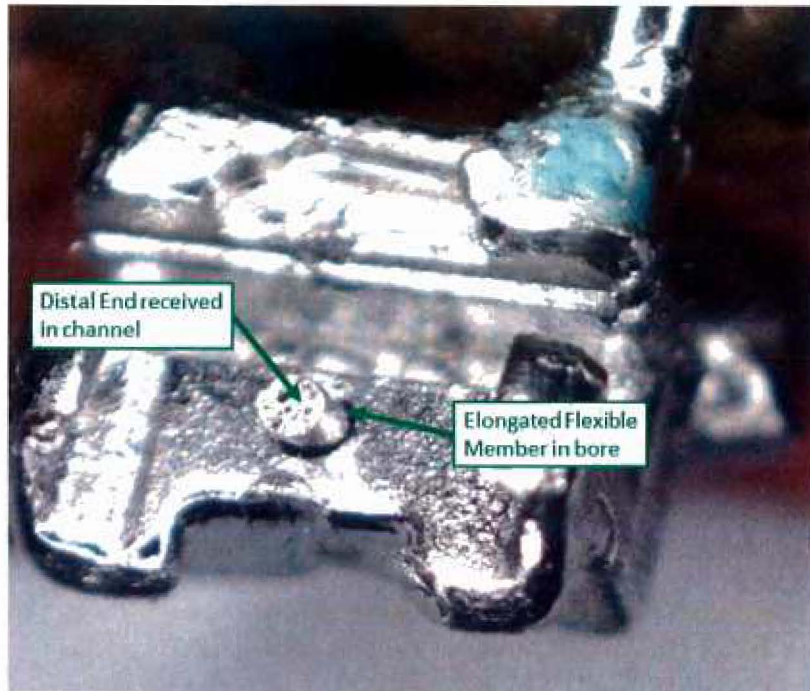


Fig. 9

d. As perhaps best seen in Fig. 9 above by comparing the size of the bore that receives the proximal end of the flexible member to the curved ends of the channel, the seat defined by the first and second ends of the channel are each dimensioned to matingly receive the distal end of the flexible member which extends anteriorly outwardly relative to the anterior facing surface of the base member.

e. Like the fourth embodiment described in the '072 patent, as seen in Fig. 9 above, the bore diameter of the ProMIM bracket generally increases from the posterior surface side in the direction of the anterior surface, allowing the flexible member to move relative to the bore. (See '072 patent, col. 20, lines 2-12.) Thus, the flexible member is not substantially deformed when received in the respective seats.

f. As required for the sliding function of the ligating slide, the distal end of the elongated flexible member is resiliently



1 deformable along a path of travel when the ligating slide moves  
2 between the first and second positions and out of the respective  
3 seats and along the channel defined in the posterior facing  
4 surface of the ligating slide, wherein the flexible member  
5 cooperates with the channel to releasably secure the ligating slide  
6 in the first and second positions.

7 21. Upon information and belief, Defendants' acts of direct infringement of  
8 the '072 patent were conducted with knowledge of the '072 patent and constitutes  
9 willful infringement, warranting a determination that defendants' infringement is  
10 egregious and warrants enhancement of damages and an award of attorney fees  
11 under 35 U.S.C. § 284.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Ormco requests the following relief against IMD Inc.,  
14 IMD LLC, and Ortho Prime:

15 1. That judgment be entered adjudging that IMD Inc., IMD LLC,  
16 and Ortho Prime each has infringed the '408 patent and the '072 patent;

17 2. That judgment be entered awarding against IMD Inc., IMD LLC,  
18 and Ortho Prime, jointly and severally, damages adequate to compensate Ormco for  
19 the infringements that have occurred, but in no case less than a reasonable royalty  
20 under 35 U.S.C. § 284, together with prejudgment interest.

21 3. That an order be entered preliminarily enjoining, and judgment  
22 be entered permanently enjoining, IMD Inc., IMD LLC and Ortho Prime, and each  
23 of their agents, sales representatives, officers, servants and employees, directors and  
24 members, associates, attorneys, parents, successors and assigns, and any and all  
25 persons or entities in active concert or participation with any or all of them, from  
26 further acts of infringement of the '408 and '072 patents by making, using, selling,  
27 offering for sale or importing the ProMIM brackets or any other self-ligating bracket  
28 that is no more than colorably different from the ProMIM brackets;

1           4. That judgment be entered trebling such monetary damages that  
2 any or all of IMD Inc., IMD LLC and Ortho Prime are required to pay Ormco for  
3 willful infringement under 35 U.S.C. § 284;


4           5. That this case be adjudged and decreed exceptional under 35  
5 U.S.C. § 285 and that Ormco be awarded its reasonable attorney fees;

6           6. That Ormco be awarded its costs and interest on all damages;  
7 and

8           7. That Ormco be granted such other relief as the Court deems just  
9 and proper.

10  
11 Dated: October 21, 2016

Respectfully submitted,  
HONIGMAN MILLER  
SCHWARTZ AND COHN LLP

12  
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14 By:   
15 David L. De Bruin  
16 Callie J. Sand  
17 Attorneys for Plaintiff  
18 ORMCO CORPORATION  
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**DEMAND FOR JURY TRIAL**

Plaintiff Ormco Corporation demands a trial by jury of all issues triable of right by jury.

Dated: October 21, 2016

Respectfully submitted,  
HONIGMAN MILLER  
SCHWARTZ AND COHN LLP

By:   
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ORMCO CORPORATION