

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SMILEDIRECTCLUB, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 6:20-cv-1115
)	
CANDID CARE CO.,)	
)	
Defendant.)	
)	
)	

COMPLAINT

Plaintiff SmileDirectClub, LLC (“Plaintiff” and/or “SDC”), for its complaint against defendant Candid Care Co. (“Defendant” and/or “Candid”) alleges as follows:

BACKGROUND AND NATURE OF ACTION

1. SDC pioneered the direct-to-consumer market for clear aligners used in orthodontics.
2. SDC’s systems and methods provide advances in coordinated and distributed telemedicine that allow consumers to straighten their teeth at 60 percent below the prices of traditional in-office orthodontic treatments and without the hassle and inconvenience of in-person monthly dental visits.
3. As part of these advanced telemedicine systems and methods, SDC operates a national chain of SmileShop® retail stores, which form a core part of its dental support organization (“DSO”) business.

4. During a visit to one of SDC's SmileShop® retail stores, staff members gather comprehensive patient data for subsequent review and assessment by a dentist or orthodontist who uses SDC's telemedicine technology to treat patients including two-dimensional and three-dimensional images of patients' teeth and gums, health and dental histories; and also provide patients with information about financing and pricing, clear aligner therapy in general, and visualizations of how the aligners can let patients change their own smiles.

5. The affordability and accessibility of clear aligners available through SDC's systems and methods, including the use of the SmileShop® retail stores, has disrupted traditional orthodontic delivery models. It has also subjected SDC to copyists, who seek to improperly benefit from SDC's innovation.

6. Indeed, recognizing SDC's success, Candid began opening its own version of SmileShops® in 2018, which it calls "Candid Studios." In so doing, and on information and belief, Candid knowingly copied the systems and methods employed in SDC's SmileShops® while fully aware that SDC was seeking patent protection for those systems and methods.

7. On December 8, 2020, the United States Patent Office issued U.S. Patent No. 10,861,599 (the '599 patent), attached as Exhibit A.

8. SDC now brings this patent infringement action. SDC seeks damages for Candid's infringement of the '599 patent and an injunction barring Candid from further infringement.

JURISDICTION AND VENUE

9. This action arises under the patent laws of the United States, 35 U.S.C. § 271, *et seq.* Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Candid in that at all times pertinent hereto, upon information and belief, Candid has systematic activities in this Judicial District and has and/or is committing infringing acts in Texas and this District.

11. Venue properly lies in this Judicial District pursuant to 28 U.S.C. § 1400(b) because Candid has committed acts of infringement in this District and has a regular and established place of business in this District.

PARTIES

12. SDC is a Tennessee limited liability company with its principal place of business in Nashville, Tennessee. SDC holds the rights to its intellectual property, including to the '599 Patent.

13. Upon information and belief, Defendant Candid is a company organized and existing under the laws of Delaware, with its principal place of business in New York, New York.

SDC'S DEVELOPMENT OF ITS INNOVATIVE SYSTEMS AND METHODS

14. A full 85% of Americans could benefit from orthodontic care. Yet, because more than 60% of all counties in the U.S. do not have an orthodontist's office and the typical price tag for malocclusion correction is \$5,000 to \$8,000, a mere 1% of these consumers have been able to receive the care they need and want each year.

15. SDC was founded in 2014 to help bridge that gap. SDC's innovations democratized access to teeth straightening solutions in a way that has revolutionized the dental industry. As a result, hundreds of millions of consumers worldwide now have access to treatment of mild to moderate malocclusion, or misalignment of the teeth, pending eligibility for clear aligner therapy, as determined by the state-licensed doctors affiliated with SDC.

16. SDC values its innovations in this technology, which it believes gives it a significant advantage over its competitors and potential competitors. As such, SDC maintains an active patent

protection program to safeguard its innovations and to prevent others from improperly capitalizing on SDC's innovation efforts. SDC's growing patent protection program encompasses eighteen patents issued in the United States and dozens of patent applications pending worldwide.

17. Prior to SDC's innovations, patients had to visit state-licensed dentists or orthodontists in person, on numerous occasions, during limited office hours, at assigned times, throughout a years' long course of treatment, for mild-to-moderate malocclusion (misalignment of the teeth). In addition to the high financial cost, a treatment program of this kind was inaccessible for those living in areas or in circumstances where the time commitment and travel required for many repeat visits to a dentist or orthodontist office was just not possible.

18. Through its innovative systems and methods, SDC enables coordinated and distributed dental support services including intraoral measurement services, treatment planning and review, and orthodontic appliance manufacture and delivery, without requiring patients and doctors to ever be in the same room. These systems and methods also provide non-clinical, administrative dental support services, such as marketing and advertising assistance, a call center, assistance with logistics and supply services, billing and collection services, and access to SDC's web-based teledentistry platform (collectively, "DSO Services") to those dental practices who choose to engage SDC for such DSO Services. These DSO Services enable state-licensed doctors to offer a more affordable option for orthodontic treatment of mild to moderate cases of malocclusion with clear aligner therapy – safely, discreetly, and without the hassle of in-person monthly visits.

19. SDC engages in extensive on-line marketing. Consumers interested in exploring whether doctors using the SDC DSO Services, including the teledentistry platform, can assist them

to straighten their teeth, can visit the SDC website, and schedule a free appointment at an SDC SmileShop® location.

20. Consumers request an appointment at a SmileShop® via SDC's online appointment management system. The appointment management system receives the appointment request, schedules an appointment, and then generates and communicates to the consumer confirmation for the upcoming SmileShop® appointment, among other features.

21. Each SmileShop® is a comfortable retail location. Starting with the information provided by the consumer, SmileGuides take photos of the consumer's teeth and gums using both a traditional camera and a sophisticated camera, such as an iTero scanner, which takes approximately 6,000 photos per second. These sophisticated photographs feed into a computer program that generates a 3D image of the consumer's teeth and gums that is sent to a dental lab, along with the other information collected from the consumer, for the creation of a draft treatment plan to address the consumer's chief complaint.

22. Once the detailed 3D images are generated, the draft treatment plan is created and uploaded to SDC's remote SMILECHECK platform. Similarly, SDC uploads the consumer's medical and dental history and informed consent and other relevant information and photos to SDC's remote SMILECHECK platform. After assessing all information uploaded by SDC and such other information, documentation and/or clearances that the state-licensed treating doctor determines is necessary, the treating doctor decides in his or her professional opinion, whether that consumer is a viable candidate for remote clear aligner therapy. If so, the treating doctor reviews and modifies, as necessary, the draft treatment plan.

23. Once approved, a 3D rendering of what the patient's teeth currently look like and how their teeth will move over the course of proposed treatment is uploaded to the patient's

account on the SDC online portal for the patient to log into and view. If the patient is satisfied with their treatment plan and elects to move forward, the patient approves the treatment plan, and the treating doctor authorizes a prescription order for the clear aligners to be manufactured.

24. SDC then fulfills the prescription by arranging for the manufacture and shipment of the aligners from an FDA-approved and certified manufacturing facility, and then ships the clear aligners directly to the patient's address at the direction of the treating doctor.

25. The consumer and his or her treating doctor control all clinical decisions, while SDC handles the logistics of their interactions. In other words, the consumer is the doctor's patient, and the doctor alone directs treatment and makes medical and clinical decisions for the patient, but without actually seeing the patient in person. SDC, on the other hand, provides the front- and back-office operations for the doctor, which enables her to focus on her patient's treatment.

26. Unfortunately, where SDC leads, Candid follows. SDC expended significant resources to develop, perfect, and stand-up its systems and methods, including numerous SmileShops® across the United States. Candid, not content to simply copy SDC's impression kit model (in whole or in part), began to set up its own Smile Shops, which it calls "Candid Studios," and implement the same detailed systems and methods developed by SDC, in an infringement of SDC's intellectual property rights.

THE PATENT-IN-SUIT

27. SDC is the assignee and owner of the '599 patent entitled "Arrangements for Intraoral Scanning." The '599 patent was issued on December 8, 2020.

28. The '599 patent is directed to technological improvements in coordinated and distributed processing of intraoral scan data for production of clear aligners for dental realignment. As the background of the '599 patent makes clear, prior systems required co-location and

coordination between the patient, the orthodontist, and impression generation systems (either physical or digital). (Ex. A, '599 patent at 1:24-54.)

29. This coordination requires “significant time” and “significant inconvenience to the patient and increases the cost of the treatment plan to both the dental professional and the patient.” (*Id.* at 1:39-55.) By contrast, the systems and methods of the '599 patent provide for distributed impression generation and analysis “without a dentist or orthodontist physically seeing the user.” (*Id.* at claim 1.) As the '599 patent explains, because “the doctor may approve of the treatment plan for the user without having to physically see the user in person... the user may not be inconvenienced with a trip to a doctor’s office, which may also save time for the user.” (*Id.* at 15:21-26.)

30. The '599 patent discloses requesting an appointment: “the user 104 may access a website (or other network-based portal) associated with the appointment management system 100. The user 104 may book an appointment at an intraoral scanning site 106 on the website.” (*Id.* at 5:7-11; *see also* 5:11-9:56.)

31. The '599 patent further encompasses pre-appointment messaging services. (*Id.* at 9:57-12:19.) For example, “one or more messages may be automatically generated to the use 104 (e.g., via respective communications device(s).” (*Id.* at 9:59-62.) “[T]he message generator 136 can include instructions for generating an appointment confirmation message” and “[t]he appointment confirmation message may be or include a message that indicates that the user’s 104 appointment has successfully been reserved.” (*Id.* at 10:23-33.) “[T]he message generator 136 can include instructions for generating one or more appointment reminder messages.” (*Id.* at 10:49-51.)

32. The '599 patent also includes intraoral scanning: “the user 104 may be directed to a room where the user 104 will receive their intraoral scan. A technician at the scan shop 106 may administer the intraoral scan. The technician may administer the intraoral scan using, for instance an iTero® scanner. As the technician administers the intraoral scan, the intraoral scanner may produce data which is visually represented on a display. The data may correspond to a three-dimensional scan of the user’s 104 mouth.” (*Id.* at 13:43-50.)

33. After the intraoral scan is complete, “a quality control technician may review and approve the intraoral scan. The quality control technician may be located at the intraoral scanning site 106... [or] the quality control technician may be located remotely.” (*Id.* at 14:6-11.) “[T]he quality control technician may ensure that subsequent visits to the intraoral scanning site 106 or unnecessary calls to the user 104 are avoided by collecting all necessary information during a single appointment of the user 104.” (*Id.* at 14:23-26.) “Once the quality control technician approves of the intraoral scan (and photographing), the user 104 may leave the room where the user 104 received their intraoral scan.” (*Id.* at 14:41-43.)

34. After the intraoral scan is complete and approved by the quality control technician, a treatment plan is created from the three dimensional data, (*id.* at 15:42-48), for the doctor’s approval “without having to physically see the user in person.” (*Id.* at 15-23-24.) “[O]nce the treatment plan is approved by the doctor, the treatment plan may be . . . automatically uploaded to the user portal.” (*Id.* at 15:12-24.)

35. Further, upon approval by the doctor, the data for the treatment plan is provided to a fabrication site (*id.* at 2:47-67; 15:49-64), and the fabricated aligners are sent to the user. (*Id.* at 15:65-66.)

36. Thus, the methods and systems claimed in the '599 patent coordinate activities of distributed components including at least an appointment management system, an intraoral scanning site, a treatment plan site, and a fabrication site, and includes:

- “receiving, by an appointment management system, a request to schedule an appointment at an intraoral scanning site having an intraoral scanner configured to conduct an intraoral scan of a mouth of a user” (*id.* at 1:61-65);
- “scheduling, by the appointment management system, the appointment in accordance with the request” (*id.* at 1:65-67);
- “generating and communicating, by the appointment management system, a message to the user... includ[ing] a confirmation confirming the scheduled appointment” (*id.* at 1:67-2:3);
- “conducting, using the intraoral scanner, the intraoral scan at the intraoral scanning site during the scheduled appointment. The intraoral scan generates three-dimensional data of the mouth of the user” (*id.* at 2:4-7);
- “generating, by a treatment plan computing system at a treatment plan site, a treatment plan for the user based on the three-dimensional data of the mouth of the user” (*id.* at 2:7-10);
- “receiving an approval of the treatment plan by a dental or orthodontic professional. The approval is received without the dental or orthodontic professional physically seeing the user in person” (*id.* at 2:10-14);
- “producing, at a fabrication site, a plurality of aligners based on the treatment plan. The plurality of aligners are specific to the user and are configured to reposition one or more teeth of the user in accordance with the treatment plan” (*id.* at 2:14-18); and
- “sending the plurality of aligners to the user.” (*Id.* at 2:18- 2:19.)

CANDID'S INFRINGEMENT OF THE '599 PATENT

37. The application that matured into the '599 patent, U.S. Patent Application No. 16/859,950 ("the '950 application") was filed on April 27, 2020, and claims priority to an application filed on June 21, 2017. The '950 application was first published and publicly available on August 13, 2020.

38. On information and belief, Candid knew about SDC's application upon publication. Therefore, on information and belief, Candid was fully aware that SDC sought patent protection in the inventions disclosed and claimed in the '599 patent since at least August 2020.

39. Despite the knowledge, Candid's operation of its Candid Studios infringe and continue to infringe the systems and methods of '599 patent.

40. Claim 16 of the '599 patent recites:

A method of producing aligners for repositioning one or more teeth of a user, the method comprising:

receiving, by an appointment management system, a request to schedule an appointment at an intraoral scanning site, the intraoral scanning site having an intraoral scanner configured to scan a mouth of a user, the appointment being for a technician to conduct an intraoral scan of the mouth of the user at the intraoral scanning site without a dentist or orthodontist physically seeing the user during the scheduled appointment;

scheduling, by the appointment management system, the appointment at the intraoral scanning site based on the request;

generating and causing transmission of, by the appointment management system, a message to a device of the user, the message including a confirmation confirming the scheduled appointment;

conducting, using the intraoral scanner, the intraoral scan at the intraoral scanning site during the scheduled appointment, the intraoral scan generating three-dimensional data of the mouth of the user;

causing generation of, by a treatment plan computing system located at a treatment plan site, a treatment plan for the user based on the three-dimensional data;

receiving an indication of an approval of the treatment plan by a dentist or an orthodontist, wherein the approval is received without the approving dentist or orthodontist having physically seen the user;

producing, at a fabrication site, a plurality of aligners based on the treatment plan, the plurality of aligners specific to the user and being configured to reposition one or more teeth of the user in accordance with the treatment plan; and

sending the plurality of aligners from the fabrication site directly to the user, wherein the user receives orthodontic treatment without ever having physically seen the approving dentist or orthodontist.

41. On information and belief, Candid receives, by an appointment management system, a request to schedule an appointment for an intraoral scan at a Candid Studio location. Candid's website explains that an appointment at a Candid Studio location may be made by visiting Candid's website at [candidco.com/studios](https://www.candidco.com/studios), scrolling down to the list of locations, and clicking the "Book Now" link on the location that the user would like to visit.¹

42. Candid Studio locations use intraoral scanners configured to scan the mouths of customers. Candid's website explains that "[t]he process starts with a 3D scan of your teeth at a Candid Studio location."² The website further states that Candid's intraoral scanner "takes thousands of pictures every second, which are then meshed together into a high-definition 3D image that serves as a replica of your mouth."³ Candid Studios use iTero® scanners, the same type of intraoral scanners disclosed in the '599 patent and used in SmileShop® locations.

43. The intraoral scan is performed by a technician without a dentist or orthodontist physically seeing the user during the scheduled appointment. Candid's website explains that there is not an orthodontist on site at Candid Studio locations and that "you won't see your orthodontist

¹ See <https://www.candidco.com/faq/q/how-do-i-make-an-appointment>, last visited December 8, 2020.

² <https://www.candidco.com/faq/q/how-is-my-treatment-plan-made>, last visited December 8, 2020.

³ <https://www.candidco.com/faq/q/how-does-a-scan-work>, last visited December 8, 2020.

in person.”⁴ Rather, the intraoral scans are performed by “care specialists” who are “experts on the photo and 3D scan process.”⁵

44. On information and belief, Candid’s appointment management system schedules appointments at Candid Studio locations.⁶

45. On information and belief, Candid’s appointment management system generates and causes transmission of a message to the customer confirming the scheduled appointment.⁷

46. During the user’s scheduled appointment, a Candid “care specialist” conducts an intraoral scan of the user’s mouth using an intraoral scanner which generates three-dimensional data of the mouth of the user. Candid’s website explains that the intraoral scanner “takes thousands of pictures every second, which are then meshed together into a high-definition 3D image that serves as a replica of your mouth.”⁸

47. After the intraoral scan takes place at the Candid Studio, a treatment plan is generated for the user based on the three-dimensional data of the mouth of the user gathered in connection with the intraoral scans. Candid’s website explains that “[a]fter your studio visit, your diagnostic records (the 3D scan, 8 intraoral and extraoral photos, and a dental and medical history questionnaire) are submitted to a state-licensed orthodontist in our network. Once they’ve reviewed your records and approved you for treatment, your treatment plan will be designed.”⁹

48. On information and belief, the treatment plan is generated by a treatment plan computing system located at a treatment plan site.¹⁰

⁴ <https://www.candidco.com/faq/q/orthodontist-on-site-at-studio>, last visited December 8, 2020.

⁵ *Id.*

⁶ See <https://www.candidco.com/faq/q/how-do-i-make-an-appointment>, last visited December 8, 2020.

⁷ *Id.*

⁸ <https://www.candidco.com/faq/q/how-does-a-scan-work>, last visited December 8, 2020.

⁹ <https://www.candidco.com/faq/q/how-is-my-treatment-plan-made>, last visited December 8, 2020.

¹⁰ *Id.*

49. Thereafter, the user’s treatment plan is approved by a dentist or an orthodontist without the approving dentist or orthodontist having seen the user in person. Candid’s website explains that the user “won’t see your orthodontist in person,”¹¹ but that “after your studio visit, an experienced orthodontist in our network will design and engineer your individualized treatment plan.”¹²

50. Candid’s aligners are produced at a fabrication site based on the individual user’s treatment plan and then sent to the user. Candid’s website describes that “[o]nce you approve your treatment plan, your aligners will be custom-fabricated and shipped to you within three weeks.”¹³

51. The aligners are specific to the user and are configured to reposition one or more teeth of the user in accordance with the treatment plan. The Candid website explains “[a]ligners work by using carefully calibrated force to move your teeth into a new position, forcing the body to adapt by remodeling the bone. Each set of aligners is a unique 3D-printed model of the teeth designed to move them into different positions along the way to the desired end result.”¹⁴ The website further explains that “[t]he individualized treatment plan your orthodontist prescribes will harness these biomechanical processes to straighten your teeth gently and gradually. Each step— that is, each new set of aligners — will move them only in small, conservative increments. Eventually your teeth will have moved fully into place, and the active phase of treatment will be complete.”¹⁵

52. On information and belief, the aligners are sent from the fabrication site directly to the user without the user ever having physically seen the dentist or orthodontist that approved the

¹¹ <https://www.candidco.com/faq/q/orthodontist-on-site-at-studio>, last visited December 8, 2020.

¹² <https://www.candidco.com/faq/q/will-i-see-a-model-of-my-teeth>, last visited December 8, 2020.

¹³ <https://www.candidco.com/faq/q/when-do-i-get-aligners>, last visited December 8, 2020.

¹⁴ <https://www.candidco.com/faq/q/how-do-aligners-work>, last visited December 8, 2020.

¹⁵ *Id.*

treatment plan. Candid's website describes that "[o]nce you approve your treatment plan, your aligners will be custom-fabricated and shipped to you within three weeks."¹⁶ Further, Candid's website explains that there is not an orthodontist on site at Candid Studio locations and that "you won't see your orthodontist in person."¹⁷

53. Therefore, Candid at least directly infringes claim 16 of the '599 patent in violation of 35 U.S.C. § 271.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 10,861,599

54. SDC repeats and realleges each and every allegation contained in paragraphs 1-53, inclusive, as though fully set forth herein.

55. The '599 patent is valid and enforceable.

56. SDC is the owner of all right, title, and interest in and to the inventions claimed in the '599 patent. SDC is entitled to receive all damages and the benefits of all other remedies for Candid's infringement.

57. Candid has had actual notice of the '599 patent since at least December 8, 2020.

58. Candid makes, uses, sells, and/or offers for sale methods and systems that directly infringe, either literally or under the doctrine of equivalents, one or more claims of the '599 patent, including at least independent claim 16 in violation of 35 U.S.C. § 271(a).

59. Candid's conduct has caused and will continue to cause SDC substantial damage, including irreparable harm, for which SDC has no adequate remedy at law, unless and until Candid is enjoined from infringing the '599 patent.

¹⁶ <https://www.candidco.com/faq/q/when-do-i-get-aligners>, last visited December 8, 2020

¹⁷ <https://www.candidco.com/faq/q/orthodontist-on-site-at-studio>, last visited December 8, 2020.

PRAYER FOR RELIEF

Wherefore, SDC respectfully prays for entry of a judgment and relief as follows:

- A. For a judgment that Candid has infringed the '599 patent;
- B. For a preliminary and permanent injunction enjoining Candid and its agents, officers, directors, employees and all persons in privity or active concert or participation with them, directly or indirectly, from infringing, inducing others to infringe, or contributing to the infringement of the '599 patent;
- C. For a judgment and award that Candid account for and pay to SDC damages adequate to compensate for Candid's infringement of the '599 patent, including lost profits but in no event less than a reasonable royalty;
- D. For a judgment and award of Candid's total profits in an amount subject to proof at trial, pursuant to 35 U.S.C. § 289;
- E. For a judgment and award of any supplemental damages sustained by SDC for any continuing post-verdict infringement of the '599 patent until entry of final judgment with an accounting as needed;
- F. For an order finding that this case is exceptional case under 35 U.S.C. § 285 and awarding SDC its costs, expenses, and disbursements incurred in this action, including reasonable attorneys' fees as available by law to be paid by Candid;
- G. For an award of pre-judgment interest, post-judgment interest, and costs in this action; and
- H. For an award of such other relief to SDC as this Court deems just and proper.

DEMAND FOR JURY TRIAL

SDC demands a trial by jury on all issues so triable.

Dated: December 8, 2020

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