IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
FILED

FEB 17 2009

Michael N. Milby
Clerk of Court

ClearCorrect, Inc.,

PLAINTIFF,

vs.

Align Technology, Inc.,

DEFENDANT.

Civil Action Number H-09-470

Jury demanded

ORIGINAL COMPLAINT

ClearCorrect, Inc. seeks declarations of non-infringement, invalidity, and unenforceability relating to certain patents possessed by Align Technology, Inc.

THE PARTIES

1. ClearCorrect, Inc. is a corporation organized under the laws of Texas. ClearCorrect's principal place of business is in Houston, Texas.

2. Align Technology, Inc. ("Align") is a corporation organized under the laws of Delaware. Align's principal place of business is in Santa Clara, California.

JURISDICTION AND VENUE

3. This action arises under federal law. This court has jurisdiction under 28 U.S.C. §§ 1331, 1338, 2201, and 2202 and through the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

4. This Court has personal jurisdiction over Align because Align does business in this district.

5. Venue is appropriate in this district because Align does business in this district and is subject to personal jurisdiction in the Southern District of Texas.

BACKGROUND FACTS

CLEARCORRECT, INC.

6. ClearCorrect was founded by dentists to serve the dental and orthodontic industry by providing a clear aligner therapy system, including components of that system.

ALIGN TECHNOLOGY, INC.

7. Align manufactures the components of a clear aligner therapy system. Align is also the assignee of a number of patents involving the manufacture and sale of components used for clear aligner therapy.

THE PRESENCE OF A CASE OR CONTROVERSY

8. Align has engaged in a pattern of conduct designed to prevent challenges to its position in the market for clear aligner therapy systems and the components of those systems. This conduct includes intimidation, threats of litigation, and litigation against consumers who prefer products offered by Align's competitors. This conduct also includes intimidation, threats of litigation, and litigation against manufacturers that compete with Align in the market for clear aligner therapy.

9. A recent example of Align's pattern of conduct occurred at a recent dental conference held in San Antonio, Texas. There, an Align representative repeatedly made misrepresentations concerning ClearCorrect and its principals. The Align representative stated that ClearCorrect was started by the same individual who started OrthoClear, a former, and now defunct, competitor of Align. The Align representative also made the false statement that ClearCorrect's principals used Align's product and that "most of them went to jail and now they are trying again to compete with us." The

Align Representative further stated that ClearCorrect was "shady" because it would not provide Align information explaining how ClearCorrect manufactured ClearCorrect's product. The Align Representative also stated that Align would "go after them again"—a statement understood by ClearCorrect as a reference to past litigation between Align and OrthoClear.

10. Align has a litigious history, often involving its patent claims. ClearCorrect understands the statements of Align to mean that Align intends to sue ClearCorrect for patent infringement.

CLEARCORRECT'S CLAIMS

COUNT 1
DECLARATORY JUDGMENT OF INVALIDITY OF UNITED STATES PATENTS

11. ClearCorrect repeats and incorporates by reference each of the foregoing paragraphs of this complaint.

12. A case or controversy exists between Align and ClearCorrect concerning the validity of Align's patents that relate to the manufacture and sale of a clear aligner therapy system. This controversy requires a declaration of rights by this Court.

13. Align's patents that relate to the manufacture and sale of a clear aligner therapy system, and each claim thereof, are invalid for failure to meet the requirements of patentability under 35 U.S.C. § 101, *et seq.*

14. ClearCorrect is entitled to a declaratory judgment that the claims of Align's patents related to the manufacture and sale of a clear aligner therapy system are invalid.

COUNT 2
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF UNITED STATES PATENTS

15. ClearCorrect repeats and incorporates by reference each of the foregoing paragraphs of this complaint.

16. A case or controversy exists between Align and ClearCorrect concerning the infringement of Align's patents that relate to the manufacture and sale of a clear aligner therapy system. This controversy requires a declaration of rights by this Court.

17. ClearCorrect has not directly or indirectly infringed and does not directly or indirectly infringe any valid, enforceable claim of any of Align's patents that relate to the manufacture and sale of a clear aligner therapy system, either literally or under the doctrine of equivalents.

18. ClearCorrect is entitled to a declaratory judgment that it does not directly or indirectly infringe the claims of Align's patents that relates to the manufacture and sale of a clear aligner therapy system, either literally or under the doctrine of equivalents.

JURY DEMAND

19. ClearCorrect demands a jury.

PRAYER

ClearCorrect asks for the following:

(a) a final judgment declaring that the claims of Align's patents that relate to the manufacture and sale of a clear aligner therapy system are invalid;

(b) a final judgment declaring that the claims of Align's patents that relate to the manufacture and sale of a clear aligner therapy system are unenforceable;

(c) a final judgment declaring that the claims of Align's patents that relate to the manufacture and sale of a clear aligner therapy system have not been infringed by ClearCorrect; and

(d) all other relief allowed by law or equity, including, if applicable, pre-judgment and post-judgment interest, costs, attorneys' fees.

Respectfully submitted,

Dated: February 17, 2009

By: Randy J. McClanahan

Randy J. McClanahan
State Bar No. 13391500
randy@mmellp.com
Robert H. Espey, II
State Bar No. 24007163
bob@mmellp.com
Michael D. Myers
State Bar No. 00791331
mike@mmellp.com
McCLANAHAN • MYERS • ESPEY, L.L.P.
3355 West Alabama, Suite 210
Houston, Texas 77098
Telephone: (713) 223-2005
Facsimile: (713) 223-3664

ATTORNEYS FOR CLEARCORRECT, INC.