

ALIGN TECHNOLOGY, INC. v. INTERNATIONAL TRADE COMMISSION, Appeal Nos. 2013-1240, -1363 (Fed. Cir. July 18, 2014). Before Chen and Prost. Appealed from International Trade Commission. (Investigation No. 337-TA-562).

Background:

Align Technology, Inc. ("Align") develops and owns patents for the Invisalign System, which uses a series of clear dental aligners to adjust the position of a patient's teeth. Align filed a complaint with the International Trade Commission ("Commission") alleging that OrthoClear violated 19 U.S.C. §1337 by importing and selling in the United States dental aligners that infringe Align's patents. OrthoClear and Align then agreed to a Consent Order, which was entered by the Commission. In the Consent Order, OrthoClear agreed to stop importing and selling the dental aligners in the United States until Align's patents have expired.

Align, however, subsequently filed a new complaint, alleging that ClearCorrect Operating, LLC ("ClearCorrect") was a "successor, assign, or agent" of OrthoClear, and thus subject to the Consent Order, and that ClearCorrect was violating the Consent Order by selling an infringing product. In response, ClearCorrect filed a motion to terminate the enforcement proceedings, arguing that its accused product did not fall within the scope of the Consent Order.

The Administrative Law Judge issued Order No. 57, which denied ClearCorrect's motion to terminate the enforcement proceedings. ClearCorrect sought the Commission's review of Order No. 57, and the Commission reversed Order No. 57, finding that the accused product is not within the scope of the Consent Order.

Issue/Holding:

Did the Commission err by reviewing Order No. 57? Yes, vacated and remanded.

Discussion:

The Federal Circuit found that the Commission's review of Order No. 57 was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Specifically, the Federal Circuit noted that Order No. 57 was an "order" by the Administrative Law Judge, and therefore was not subject to review by the Commission.

The Commission's Rules of Practice and Procedure, 19 C.F.R. §210.1, expressly distinguish between "initial determinations" and "orders." An Administrative Law Judge's *grant* of certain kinds of relief (e.g., to terminate a proceeding or to permit a party to intervene) is an "initial determination" and is thus subject to immediate review by the Commission. However, the Administrative Law Judge's *denial* of such relief is an "order" and is thus not subject to immediate review by the Commission.

The Federal Circuit ruled that Order No. 57, which denied ClearCorrect's motion to terminate the enforcement proceedings, is an "order" and that the rules clearly prohibit the Commission from reviewing such "orders."

Although the Commission's Rules of Practice and Procedure may be waived, suspended, or amended by the Commission, which would allow the Commission to review an "order," the Federal Circuit found that there was no evidence to support that the Commission had intended to waive, suspend, or amend the regulations.