

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

ALIGN TECHNOLOGY, INC.,

Plaintiff,

v.

3SHAPE A/S and 3SHAPE TRIOS A/S

Defendants.

C.A. No. 6:20-cv-00979

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Align Technology, Inc. (“Align”) demands a trial by jury on all issues so triable and, for its complaint against Defendants 3Shape A/S and 3Shape Trios A/S (collectively, “3Shape”), alleges as follows:

THE PARTIES

1. Align is a Delaware corporation incorporated in April 1997, with its principal place of business in San Jose, California.
2. 3Shape A/S is a Danish corporation with a principal place of business at Holmens Kanal 7, 1060 Copenhagen K, Denmark.
3. 3Shape Trios A/S is a Danish corporation with a principal place of business at Holmens Kanal 7, 1060 Copenhagen K, Denmark.
4. 3Shape makes, uses, sells, and offers for sale in the United States and/or imports into the United States the TRIOS, TRIOS 3, and TRIOS 4 scanners and software products that embody systems and/or methods for intraoral scanning for dental applications.

JURISDICTION AND VENUE

5. This lawsuit is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendants in that they have, directly or through agents and/or intermediaries, committed acts within Texas giving rise to this action and/or have established minimum contacts with Texas such that the exercise of jurisdiction would not offend traditional notions of fair play and justice.

8. On information and belief, Defendants regularly conduct business in Texas, and purposefully avail themselves of the privileges of conducting business in Texas. In particular, on information and belief, Defendants, directly and/or through their agents and/or intermediaries, make, use, import, offer for sale, sell, and/or advertise their products and affiliated services in Texas. Defendants have placed, and continue to place, infringing products into the stream of commerce, via an established distribution channel, with the knowledge and/or understanding that such products are sold in the United States including in Texas and specifically including this District.

9. On information and belief, Defendants have derived substantial revenue from their infringing activity occurring with the State of Texas and within this District and/or should reasonably expect their actions to have consequences in Texas. In addition, Defendants have knowingly induced, and continue to knowingly induce, infringement within this District by advertising, marketing, offering for sale and/or selling devices containing infringing functionality within this District to at least resellers, distributors, customers, dentists, orthodontists, dental and orthodontic labs, and/or other end users, and by providing instructions, user manuals, advertising

and/or marketing materials that facilitate, direct or encourage the use of infringing functionality with knowledge thereof.

10. Defendants have committed patent infringement in Texas that has led to foreseeable harm and injury to Align.

11. Additionally, Defendants are subject to jurisdiction in the United States, and specifically in Texas, pursuant to FED. R. CIV. P. 4(k)(2). Defendants have contacts with the United States that include, *inter alia*, advertising, offering to sell, and/or selling their products and software throughout the United States, including Texas and this District.

12. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, as foreign corporations, 3Shape A/S and 3Shape Trios A/S may be sued in any judicial district.

BACKGROUND

13. Align is a global medical device company with industry leading innovative products such as iTero intraoral scanners and OrthoCAD software that help dental and orthodontic professionals deliver effective, innovative dental and orthodontic options to their patients.

14. Align's iTero intraoral scanners scan and provide, in conjunction with Align's OrthoCAD software, 3D imaging of an intraoral surface, such as the teeth and gums, without drying and powdering the intraoral surface (as older technology required), resulting in a digital impression. Align's iTero intraoral scanners and the software that works in conjunction with the scanners thus eliminate the need for traditional teeth impressions typically taken with an elastomeric or other material.

15. The digital impression captured by Align's iTero intraoral scanners, when teamed with Align's OrthoCAD software, can be used in a variety of dental and orthodontic applications, such as, for example, modeling the occlusion between the patient's teeth and processing images that

are capable of describing relationships between the various parts of the skeletal, dental and soft tissue elements of the craniofacial complex.

16. Align's iTero intraoral scanner and OrthoCAD digital software constitute a proprietary system and method for treating, among other things, malocclusion, misalignment, and/or chipped or missing teeth. Align's high-precision, high speed intraoral scanner and related software allow for the creation of a variety of orthodontic and dental devices including, but not limited to, crowns, bridges, bracket templates, aligners, and implants. Each dental device is custom-manufactured for each patient using computer-aided design techniques and sophisticated computer graphic interfaces to communicate with the patient's dental or orthodontic professional in the planning and implementation of the customized treatment program.

17. Align's iTero intraoral scanner and OrthoCAD software, developed by Align over many years and at great expense and effort, represent a breakthrough in the manufacturing principle of "mass customization" and a vast improvement over conventional methods for treating, among other things, chipped or missing teeth, misalignment of teeth, and malocclusion. Additionally, the iTero intraoral scanner and OrthoCAD software provide a "chair-side" platform for live viewing of the digital impression as it is being built on the display screen during scanning, for accessing valuable digital diagnosis and treatment tools, and for enhancing accuracy of records, treatment efficiency, and the overall patient experience. The innovations embodied in Align's iTero intraoral scanner and OrthoCAD software are protected by numerous United States and foreign patents, including the patents at issue in this case.

18. 3Shape designs, develops, manufactures, and markets the TRIOS, TRIOS 3, and TRIOS 4 scanners, as well as the related Dental System software products that include software modules including, but not limited to, the Implant Studio, Ortho System, Ortho Analyzer, Ortho Planner, Appliance Designer, and Ortho Control Patent (hereinafter "Dental System software

products”). Moreover, 3Shape is involved in the sale and/or importation into the United States of intraoral scanners, digital models, and digital data and Dental System software products for dental and orthodontic applications including, but not limited to, crowns, bridges, bracket templates, aligners, and implants. 3Shape’s intraoral scanners, digital and physical models generated from digital data using 3Shape software, and 3Shape’s software products for dental and orthodontic applications described above embody and/or use the patented apparatuses, systems, and methods at issue.

19. 3Shape’s TRIOS, TRIOS 3, and TRIOS 4 scanners, as well as 3Shape’s related Dental System software products (collectively, the Accused Products), directly compete with the Align’s iTero scanners and OrthoCad software. On information and belief, 3Shape developed, made, and sold its intraoral scanners and software with the intent to directly compete with Align’s intraoral scanners and software. Before introducing its products, 3Shape was aware of the structure, design, and operation of Align’s patented intraoral scanners and software, including but not limited to intraoral scanners and software developed by Cadent Holdings, Inc. (“Cadent”), which Align acquired on April 29, 2011. Moreover, 3Shape has previously entered into agreements with Align that provided 3Shape with significant access to Align’s patented technologies.

20. On information and belief, 3Shape developed, made, and sold its infringing TRIOS, TRIOS 3, and TRIOS 4 scanners and related infringing Dental System software products despite having knowledge of the Align patents at issue (i) based, at a minimum, on its knowledge of the Align intraoral scanners and software being covered by numerous patents including the patents at issue through its prior business dealings with Align, including those with Cadent, whereby 3Shape acquired specific and detailed knowledge from Align regarding the structure, function, operation, and commercial benefits of the Align products and the patent protection afforded to certain structures, functions, and operations of the patented Align technology; (ii) by virtue of 3Shape’s patent prosecution activities wherein Align’s certain of patents at issue and/or family members were

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