

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DENTAL CERAMICS, PRODUCTS
THEREOF, AND METHODS OF MAKING THE
SAME**

Investigation No. 337-TA-1050

**NOTICE OF A COMMISSION DETERMINATION OF
NO VIOLATION OF SECTION 337;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 25, 2017, based on a complaint, as supplemented, filed by Ivoclar Vivadent AG of Schaan, Liechtenstein; Ivoclar Vivadent, Inc. of Amherst, New York; and Ardent, Inc. of Amherst, New York (collectively "Ivoclar"). 82 FR 19081 (Apr. 25, 2017). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain dental ceramics, products thereof, and methods of making the same by reason of the infringement of certain claims of four United States patents: U.S. Patent No. 7,452,836 ("the '836 patent"); U.S. Patent No. 6,517,623 ("the '623 patent"); U.S. Patent No. 6,802,894 ("the '894 patent"); and U.S. Patent No. 6,455,451 ("the '451 patent"). The notice of

investigation named as respondents GC Corporation of Tokyo, Japan; and GC America, Inc. of Alsip, Illinois (collectively, “GC”). The Office of Unfair Import Investigations was also named as a party.

Earlier in proceedings, the investigation was terminated as to certain asserted patent claims, including all of the asserted claims of the ’623 patent and the ’451 patent, based upon withdrawal of the complaint. Order No. 18 (Nov. 21, 2017), *not reviewed*, Notice (Dec. 6, 2017); Order No. 24 (Dec. 19, 2017), *not reviewed*, Notice (Jan. 18, 2017); Order No. 51 (Feb. 22, 2018), *not reviewed*, Notice (Mar. 23, 2018); Order No. 56 (Mar. 28, 2018), *not reviewed*, Notice (Apr. 27, 2018).

On July 23, 2018, the ALJ issued the final initial determination (“ID”). Remaining within the scope of the investigation, as to infringement, domestic industry, or both, were claims 1, 2, 4, 5, 7, 9, 10, 13, 15-19, and 21 of the ’836 patent; and claims 1, 2, 4, 16-21, 34, 36 and 38 of the ’894 patent. The ID finds, *inter alia*, that Ivoclar failed to demonstrate infringement of the above-referenced claims of the ’836 patent. The ID finds, *inter alia*, that claims 36 and 38 (“the ’894 flexure strength claims”) are invalid as indefinite under 35 U.S.C. § 112 ¶ 2. The ID further finds that Ivoclar failed to demonstrate infringement and failed to meet the technical prong of the domestic industry requirement as to the remaining claims of the ’894 patent (claims 1, 2, 4, 5, 7, 9, 10, 13, 15-19, and 21) (“the ’894 annealing claims”). The ID finds that some, but not all, of the ’894 annealing claims are invalid in view of certain prior art.

After the issuance of the ID, the Commission solicited comments from the public concerning remedy and the public interest. On September 13, 2018, Representative Brian Higgins (R-N.Y.) filed comments in support of his constituent Ivoclar, whose headquarters is in Western New York. Letter from Rep. Brian Higgins to Chairman David S. Johanson at 1 (Sept. 13, 2018). In addition, Ivoclar, GC, and the Commission investigative attorney filed petitions for review and replies to the other parties’ petitions.

On September 21, 2018, the Commission issued its notice of review. By that notice, the Commission determined not to review the ID with respect to the ’836 patent and the ’894 flexure strength claims, thereby terminating the investigation as to those patent claims. The Commission determined to review the ID’s findings as to the ’894 annealing claims and solicited further briefing from the parties on certain issues concerning those patent claims. The Commission also solicited briefing from the parties, interested government agencies, and members of the public on remedy, the public interest, and bonding. No non-parties filed such briefing. On October 5, 2018, the parties filed opening briefs in response to the Commission notice of review, and on October 12, 2018, the parties filed reply briefs.

Having reviewed the record of the investigation, including the final ID, the parties’ petitions for review and responses thereto, and the parties’ briefing to the Commission, the Commission has determined to affirm, with modified reasoning, the ID’s conclusion that Ivoclar failed to demonstrate infringement of the ’894 annealing claims. The Commission has also determined to affirm, with modified reasoning, the ID’s finding that claims 1, 2, and 34 of the ’894 patent are anticipated by U.S. Patent No. 4,189,325 (Barrett) (RX-27). The Commission

has determined to take no position as to whether International Patent Application WO 00/34196 (“WO196”) (RX-563) invalidates any of the ’894 annealing claims or whether the technical prong of the domestic industry requirement was met for the ’894 patent. The Commission has determined to affirm the ID’s remaining findings concerning the ’894 annealing claims. Accordingly, the Commission terminates the investigation with respect to the ’894 annealing claims, and thereby the investigation in its entirety, with a finding of no violation of section 337. The reasons for the Commission’s determinations are set forth more fully in the Commission’s accompanying opinion.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: December 18, 2018