

The Parties

3. MidAtlantic is a corporation organized under the laws of the state of New Jersey with its principal place of business in West Berlin, New Jersey. MidAtlantic is a supplier and distributor of orthodontic products; providing brackets, wires, instruments and other supplies to orthodontists in the United States market.

4. Upon information and belief, Ormco is a corporation organized under the laws of the State of Delaware with its principal place of business in Orange California. Upon further information and belief, Ormco is engaged in the business of manufacturing and distributing dental products, particularly orthodontic products.

5. MidAtlantic and Ormco are direct competitors in the orthodontic products market.

Jurisdiction and Venue

6. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1338, 1331 and 2201 because the Complaint states claims arising under an Act of Congress relating to patents, including but not limited to 35 U.S.C. § 271, unfair competition including but not limited to 15 U.S.C. § 1125, and seeks relief under the Federal Declaratory Judgment Act.

7. This Court has jurisdiction over the Plaintiff's declaratory judgment claim pursuant to 28 U.S.C. §§ 2201 *et seq.* based on Defendant's threats to Plaintiff of patent infringement, thereby giving rise to an actual case or controversy under 28 U.S.C. §§ 2201 and 2202.

8. Additionally, jurisdiction is proper in this court because it arises between citizens of different states and the amount in controversy exceeds \$75,000. The Court has jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship).

9. This Court has personal jurisdiction over Ormco because, on information and belief, Ormco conducts business in the State of New Jersey and within this district, including

contracts with New Jersey business and the advertising and sale of its products to citizens of New Jersey.

10. Venue is proper in this judicial district, pursuant to 28 U.S.C. §§ 1391(b) and (c).

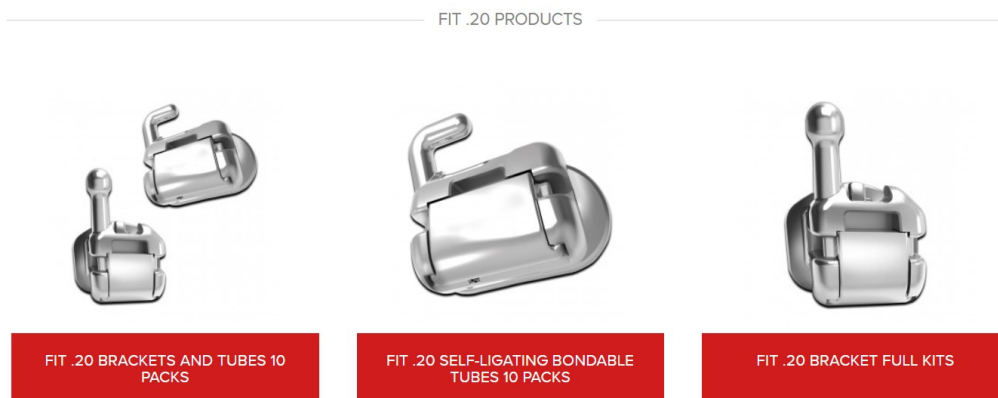
Factual Allegations

The FIT.20 Self-Ligating Orthodontic Bracket System

11. The FIT.20 Self-Ligating Bracket System (the “**FIT.20**”) is an orthodontic product comprised of brackets, wires and other components that work together when applied to a patient’s teeth to a patient’s teeth to straighten and align them.

12. MidAtlantic licenses the use of the name “FIT.20” from OrthoMogul, LLC, a Texas limited liability company owned by Dr. Robert “Tito” Norris (“**Dr. Norris**”).

13. Artist renderings of the components of the FIT.20 are shown below, as well as a photo of a complete bracket system:





14. Components of the FIT.20 system are manufactured, generally, according to embodiments of U.S. Patent No. 8,992,214 entitled “Orthodontic Self-Ligating Brackets” owned by MEM Dental Technology Co., Ltd. (“MEM”), attached hereto as Exhibit B.

15. The FiT.20 products are unique in that dimensionally they comprise the only .020” height slot bracket system on the orthodontic market today. Dr. Norris is the innovator of this 0.020” height slot bracket design, and also has a pending patent on aspects of the design related to his innovations.

16. The FIT.20 components are manufactured using the highest quality materials to meet the exacting needs of practicing orthodontists. They are precision manufactured by MEM, which is a world class metal injection molding and ceramic injection molding manufacturer serving the global marketplace with locations in Sweden and Taiwan. MEM is certified to do business in the United States as an OEM/ODM and a private label manufacturer and uses the latest technologies to develop standardized processes that ensure some of the tightest tolerances in the industry for orthodontic products. MEM’s factories are registered with the FDA and maintain the most up-to-date ISO and CE certifications.

17. MidAtlantic first introduced the FIT.20 system to the market at the annual American Association of Orthodontists (“AAO”) Annual Session in San Diego, California between April 21-25th, 2017. The AAO tradeshow is the largest annual U.S. orthodontics tradeshow in the industry.

18. Since that show, MidAtlantic’s FIT.20 system has gained substantial momentum in the marketplace, has received favorable feedback from several orthodontists regarding its attributes and performance, and as a result, is experiencing a growing reputation throughout the orthodontic industry as a premiere orthodontic system on the market.

19. To facilitate this growth, MidAtlantic has spent over \$100,000 in marketing, advertising and promoting its FIT.20 products, which represents approximately half of MidAtlantic’s total advertising budget.

20. The average product order placed for MidAtlantic’s FIT.20 system is \$2,000.

Ormco’s Orthodontic Products

21. Upon information and belief, Ormco owns the ‘545 Patent, which is entitled “Self-Ligating Orthodontic Bracket.”

22. Ormco claims that several of the orthodontic products it sells, has sold, or offers to sell under its “Damon” line of products are manufactured under the ‘545 Patent, such as (a) the Damon Q - Maxillary 1st Molar - Snaplink Tube; (b) the Damon Q - Mandibular 1st Molar Snaplink Tube, (c) the Damon 3MX - Maxillary 1st Molar - Snaplink Tube (d) the Damon 3MX - Maxillary 1st Molar - SL Buccal Tube; and (e) the Damon Q - Mandibular 1st Molar - SL Buccal Tube.

Ormco's Bad Faith Patent Assertion and Marketplace Activity

23. About two weeks after the AAO Annual Session in April 2017, on May 16, 2017, Mari's List ("**ML**"), an orthodontic buying group with more than 1,000 members, launched a digital marketing campaign through which ML offered an exclusive discount to its members for the FIT.20 system. ML posted its first ad on Facebook that day.

24. On May 17, 2017, an ML representative contacted MidAtlantic and explained that an Ormco sales manager contacted her to inform her that MidAtlantic's FIT.20 System infringed on Ormco's patents and that Ormco planned to take legal action against MidAtlantic.

25. Shortly thereafter, ML removed the Facebook post and thereafter refused to continue with the digital marketing campaign of MidAtlantic's FIT.20 orthodontic bracket system.

26. By letter dated June 22, 2017, Kavo Kerr, Ormco's parent company, informed MidAtlantic that it was "concerned that the FIT.20 appears to be covered by one or more claims of Ormco's '545 Patent" and that if their "concerns bore out, Ormco is open to pursuing a mutually beneficial commercial resolution . . ." (the "**June 22nd Letter**"), attached hereto as Exhibit C.

27. By letter dated July 18, 2017, MidAtlantic responded to Ormco's June 22nd Letter (the "**July 18th Letter**"), pointing out that Ormco had failed to identify the basis for its concern that the FIT.20 bracket is covered by one or more claims of Ormco's '545 Patent, as such claims are properly interpreted under U.S. patent law. Accordingly, MidAtlantic requested additional information upon which to assess Ormco's "concern". A copy of the July 18th Letter is attached hereto as Exhibit D.

28. By letter dated September 20, 2017, Ormco responded more forcefully, claiming that MidAtlantic's FIT.20 system infringed at least Claim 20 of the '545 Patent (the "**September**

20th Letter”), and requested a response no later than October 30, 2017. A copy of the September 20th Letter is attached hereto as Exhibit E.

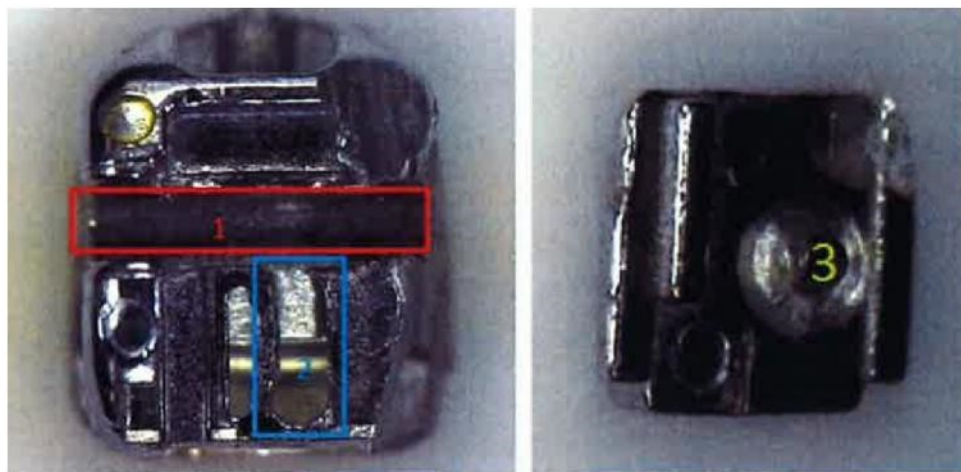
29. The September 20th Letter listed claim 20, as shown below:

A self-ligating orthodontic bracket for coupling an archwire with a tooth comprising:

A bracket body configured to be mounted to the tooth said bracket body including **an archwire slot (1)** and a slide engagement track, said slide engagement track including **a closed-ended receiving portion (2)**; and

A ligating slide engaged with said slide engagement track and moveable relative to said slide engagement track between opened position in which the archwire is insertable into said archwire slot and a closed position in which the ligating slide retains the archwire in said archwire slot, said ligating slide including a project portion (3) received with said **receiving portion (2)**, wherein said **projecting portion (3)** moves within said receiving portion during the entire travel of said ligating slide between the opened and closed positions.

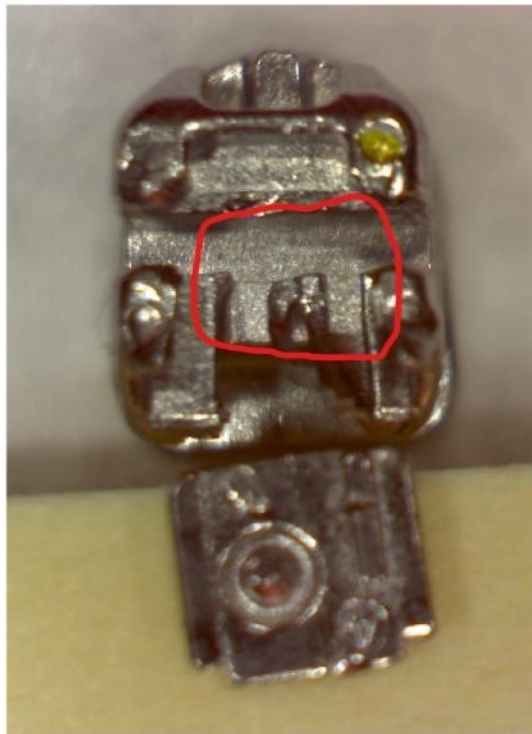
and provided number and color-coded cross-references from specific language in claim 20, to colored boxes overlaid onto dark-contrasted photos, which appear to be of MidAtlantic’s FIT.20 brackets, as shown below:



30. On October 10, 2017, MidAtlantic responded, explaining in detail that, after studying the '545 Patent and its prosecution history, and then comparing the properly interpreted independent claims of the '545 Patent against high-resolution digital microscope images of several FIT.20 brackets, the FIT.20 system clearly did not infringe the '545 Patent (the “**October 10th Letter**”). A copy of the October 10th Letter is attached hereto as Exhibit F.

31. Specifically, the October 10th Letter addressed Ormco's alleged independent claim 20 infringement, stating:

Although not specifically stating so, you suggest that the FIT.20 bracket has “a close-ended receiving portion” identified by the number 2 in the image above. However, the FIT.20 bracket has no such element. As you can clearly see in the image below, the element you identify (circled in red below) is open-ended, not close-ended as required by claim 20 and the claims that depend therefrom.



Specifically, the first slot (on the right of the image) – the “bar slot”—is opened-ended on both ends. You can see from the photos that the small horizontal protrusion on the slide engages the bar slot

which is opened on both ends. The second slot (on the left) is open on at least one end. (The bottom end also looks open in the picture, but it may have been broken during disassembly). A “circular” projection on the slide engages the open-ended slot when the ligating slide is attached to the bracket body. A closer review of the image you provided also confirms that the element is open-ended, however, the open end is partially blocked by the blue rectangle overlay. Additional high-resolution image files attached to the email forwarding this letter confirm this fact.

As you may be aware, Ormco made amendments to claim 20 during the prosecution history, and made arguments to overcome a §102(b) rejection in view of Georgakis, U.S. Patent No 6,193,508. Specifically, original claim 20 was narrowed by amendment to add the “closed-ended” receiving portion limitation, and arguments were presented that such amendment was made to overcome Georgakis. Accordingly, prosecution history estoppel applies and there is no infringement under the doctrine of equivalents.

32. Although Ormco only identified claim 20 as infringed, MidAtlantic also analyzed all of the independent claims of the ‘545 Patent, namely claims 1, 6, 9, 15 and 25, and stated its conclusion in its October 10th Letter that that they, too, are not infringed.

33. Upon information and belief, at or before Ormco sent its initial June 22, 2017 letter, it reviewed the ‘545 Patent and its patent prosecution history.

34. Upon information and belief, at or before Ormco sent its initial June 22, 2017 letter, it knew that claim 20 of the ‘545 Patent was narrowed by amendment to add the “closed-ended” receiving portion limitation to the slide engagement track element of that claim.

35. Upon information and belief, at or before Ormco sent its initial June 22, 2017 letter, it knew that arguments were presented to the USPTO that the amendment to claim 20 to add the “closed-ended” receiving portion limitation was made to achieve patentability over the prior art reference of Georgakis.

36. Upon information and belief, at or before Ormco sent its initial June 22, 2017 letter, it understood that a self-ligating orthodontic bracket with a slide engagement track had an open-

ended receiving slot, and no closed-end receiving slots, could not in good faith infringe claim 20 of the ‘545 Patent.

37. Upon information and belief, at or before Ormco sent its initial June 22, 2017 letter, it observed the structure of a FIT.20 bracket in sufficient detail and observed the open-ended receiving slot of the FIT.20 bracket.

38. Upon information and belief, at or after Ormco sent its initial June 22, 2017 letter, it observed the structure of a FIT.20 bracket in sufficient detail and observed an open-ended receiving slot of the FIT.20 bracket.

39. After receiving MidAtlantic’s October 10th Letter, Ormco sales representatives continued to make false statements to members of the orthodontic industry, including but not limited to customers and potential customers, regarding MidAtlantic’s alleged infringement of the ‘545 Patent and regarding the cessation of MidAtlantic’s business operations.

40. Specifically, on October 26, 2017 at a Mindset Knowledge Skill (“**MKS**”) Forum meeting in Dallas, Texas, Dr. Andy Sarptodar, who had twice purchased the FIT.20 System and had 35 cases in treatment, expressed reluctance to representatives of MidAtlantic to proceed with a total commitment to the FIT.20 System because an Ormco representative informed him that the FIT.20 system was not “going to be around much longer” and that Ormco “can crush MidAtlantic and Tito Norris.”

41. Thereafter, on or about November 2, 2017 at a Texas Orthodontic Study Club Meeting, Dr. Hilton Goldreich, an orthodontist and an early adopter of the FIT.20 system, suggested to another orthodontist that he consider the FIT.20 system because of the benefits he personally observed. Ormco sales representative, Teri Mills, overheard the conversation and

proceeded to inform both doctors that they may not want to get too excited about the Fit.20 bracket system, because it will not be around much longer.

42. Additionally, MidAtlantic has two FIT.20 system beta testers, including one of the largest orthodontic practice groups in the world. A beta tester in that group advised MidAtlantic that its biggest concern moving forward with its full commitment to the FIT.20 system was “whether or notOrmco will attempt to shut [MidAtlantic] down,” because that is the word going around in the industry.

43. On November 3, 2017, a customer called to return the FIT.20 System purchased at the MKS Meeting because, upon information and belief, of their concern with Ormco taking legal action against MidAtlantic for violation of its patents.

44. On or about November 6, 2017, MidAtlantic advised Ormco that Ormco’s sale representatives were making untruthful, defamatory and damaging statements to MidAtlantic’s current and prospective customers and buying groups that the FIT.20 products infringe Ormco’s patent and that if the orthodontists (or groups) adopt the FIT.20 system, those products will be recalled.

45. Thereafter, by letter dated November 9, 2017, MidAtlantic advised Ormco that it had learned that Ormco sales managers were tracking FIT.20 sales and calling MidAtlantic’s clients and prospective clients to inform them that they should not promote and/or purchase the FIT.20 because it infringes on Ormco’s patents and that legal action was imminent and that as a direct result of those statements, at least one orthodontic buying group with hundreds of members discontinued promoting the FIT.20 system (the “**November 9th Letter**”), attached hereto as Exhibit G.

46. To date, Ormco has not responded to the November 9th Letter.

COUNT I
(Declaratory Judgment of Non-Infringement of Patent)

47. MidAtlantic incorporates by reference each and every allegation in the foregoing paragraphs as if set forth fully herein at length.

48. Ormco's October 10 Letter alleges a violation of Ormco's patent rights, specifically claim 20 of the '545 Patent.

49. A case or controversy exists between MidAtlantic and Ormco concerning the non-infringement of the '545 Patent which requires a declaration of rights by this Court.

50. In light of the intrinsic record relating to the '545 Patent, the claim term "slide engagement track including a closed-ended receiving portion" cannot cover the FIT.20 system, which does not have a slide engagement track with a "closed-ended receiving portion".

51. Ormco did not undertake a reasonable investigation of the '545 Patent and the FIT.20 system before asserting on June 22, 2017, and several times thereafter, that the FIT.20 products are infringing the '545 Patent. Such assertions were and are legally and factually baseless.

52. FIT.20 does not infringe any valid or enforceable claim of the '545 Patent.

53. A reasonable person would not have alleged that the FIT.20 products infringes the '545 Patent. As admitted in its June 22, 2017 letter, Ormco had access to the FIT.20 system before making its infringement allegations.

54. A good faith investigation by one or more people at Ormco, and/or its patent counsel, in light of the information it had before it, would have led to the conclusion that the FIT.20 products do not contain each and every element of at least one valid claim of the '545 Patent.

55. MidAtlantic is entitled to a declaratory judgment that the commercial manufacture, use, offer for sale, sale or importation of FIT.20 would not infringe any valid or enforceable claim of the '545 Patent.

COUNT II
(Unfair Competition Under Section 43(a) of the Lanham Act)

56. MidAtlantic incorporates by reference each and every allegation in the foregoing paragraphs as if set forth fully herein at length.

57. By and through their acts and omissions, including specifically, but without limitation, the acts and omissions, and related transactions and occurrences, alleged herein and in other particulars subject to further investigation and discovery, Ormco made false and/or misleading statements of fact when it publicized that Ormco is infringing its patent.

58. By and through their acts and omissions, including specifically, but without limitation, the acts and omissions, and related transactions and occurrences, alleged herein and in other particulars subject to further investigation and discovery, Ormco made these false or misleading statements in bad faith as it had knowledge that MidAtlantic's FIT.20 system did not infringe the '545 Patent, and did not have a subjective reasonable belief that MidAtlantic infringed on the '545 Patent.

59. These false and misleading statements were made in a commercial advertisement which actually deceived and had the tendency to deceive a substantial segment of the orthodontic industry.

60. The false and misleading statements were material in that it was intended to cause, had caused, and likely has and continues to influence purchasing decisions by MidAtlantic's current and prospective customers.

61. Ormco caused the false and/or misleading statements to enter interstate commerce.

62. As a direct and proximate result of Ormco's conduct, MidAtlantic has been and is further likely to be injured by direct loss of sales and by a lessening and potential destruction of the goodwill associated with its products.

COUNT III
(Unfair Competition Under the New Jersey Unfair Competition Act, N.J.S.A. 56:4-1, *et seq.*)

63. MidAtlantic incorporates by reference each and every allegation in the foregoing paragraphs as if set forth fully herein at length.

64. By and through their acts and omissions, including specifically, but without limitation, the acts and omissions, and related transactions and occurrences, alleged herein and in other particulars subject to further investigation and discovery, Ormco has engaged in unfair practices in bad faith and in a manner that is likely to deceive consumers and enable it to compete unlawfully with MidAtlantic.

65. In addition, by and through their acts and omissions, including specifically, but without limitation, the acts and omissions, and related transactions and occurrences, alleged herein and in other particulars subject to further investigation and discovery, Ormco, by means of commerce, have engaged (and continue to engage) in the acts of deceptive trade practices and other unfair competition in violation of N.J.S.A. 56:4-1(a).

66. As a direct and proximate result of Ormco's conduct, MidAtlantic has suffered, and continue to suffer, substantial pecuniary injury and irreparable harm for which they have no adequate remedy at law.

COUNT IV
(Common Law Unfair Competition)

67. MidAtlantic incorporates by reference each and every allegation in the foregoing paragraphs as if set forth fully herein at length.

68. Ormco's conduct, as set forth above and in other particulars subject to further investigation and discovery, constitutes unlawful unfair competition under New Jersey law.

69. As a direct and proximate result of Ormco's conduct, MidAtlantic has suffered, and continues to suffer, substantial pecuniary injury and irreparable harm for which they have no adequate remedy at law.

COUNT V
(Disparagement/Trade Libel)

70. MidAtlantic incorporates by reference each and every allegation in the foregoing paragraphs as if set forth fully herein at length.

71. By and through their acts and omissions, including specifically, but without limitation, the acts and omissions, and related transactions and occurrences, alleged herein and in other particulars subject to further investigation and discovery, Ormco published false allegations concerning MidAtlantic's product and business with knowledge that the statements were false and/or with reckless disregard for their falsity.

72. Ormco made these false or misleading statements in bad faith.

73. As a direct and proximate result of Ormco's conduct, MidAtlantic has been and is further likely to be injured by direct loss of sales, loss of prospective contracts with customers and by a lessening of the goodwill associated with its products, for which it has no adequate remedy at law.

COUNT VI
(Tortious Interference)

74. MidAtlantic incorporates by reference each and every allegation in the foregoing paragraphs as if set forth fully herein at length.

75. MidAtlantic had contractual rights and/or protectable interests in their relationships with customers and prospective customers and had a reasonable expectation of economic advantage and benefit therefrom.

76. At all times relevant hereto, Ormco was aware of MidAtlantic's rights and/or protective economic advantages from those vendor relationships.

77. By and through their acts and omissions, including specifically, but without limitation, the acts and omissions, and related transactions and occurrences, alleged herein and in other particulars subject to further investigation and discovery, Ormco, intentionally, maliciously and in bad faith interfered with MidAtlantic's stated contractual rights and/or prospective economic advantages without justification.

78. But for Ormco's wrongful interference, it is probable that MidAtlantic would have received the anticipated economic advantage and benefit of its relationships with vendors and others.

79. As a direct and proximate result of Ormco's conduct, MidAtlantic has suffered, and will continue to suffer, substantial pecuniary injury and irreparable harm for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, MidAtlantic prays for judgment against Ormco as follows:

a. A preliminary and permanent injunction enjoining and restraining Ormco, its shareholders, agents, servants, representatives and employees, and any other persons acting in

concert with it or otherwise participating in their aid, from, communicating in any manner whatsoever that the FIT.20 system infringes an Ormco patent, and from making any otherwise false, misleading, and defamatory statements regarding MidAtlantic or its products;

b. A Judgment declaring that the FIT.20 products do not infringe the ‘545 Patent, and precluding Ormco from applying for or obtaining injunctive relief, money damages, enhanced damages, costs and/or attorneys’ fees for any alleged infringement of the ‘545 Patent;

c. A Judgment in favor of plaintiff and against defendant on each and every count of the Complaint;

d. A Judgment declaring that this case is exceptional in favor of plaintiff under 35 U.S.C. §285, as well the precedent of *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014) and *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 134 S. Ct. 1744 (2014), and accordingly Plaintiff be awarded its reasonable attorneys’ fees and expenses;

e. An award in favor of plaintiff for its costs in this action;

f. An award of compensatory and punitive damages in an amount to be determined at trial, together with an award of reasonable attorney’s fees and costs of suit; and

g. any other relief that the Court deems equitable and just.

Designation of Trial Counsel

MidAtlantic hereby designates Robert A. McKinley, Esq., as trial counsel.

Jury Demand

MidAtlantic hereby demands a trial by jury.

Certification

I hereby certify, upon information and belief, that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and that at the present time no other action or arbitration with respect to the matter in controversy is contemplated nor are there any other parties who should be joined in this action.

LAULETTA BIRNBAUM, LLC

/s Robert A. McKinley
BY: Robert A. McKinley, Esquire
Attorneys for Plaintiff Atlantic Dental, Inc. d/b/a
MidAtlantic Ortho

VERIFICATION

I, Thomas Macari, on behalf of Plaintiff Atlantic Dental, Inc. d/b/a/ MidAtlantic Ortho,

hereby state that the facts set forth in the attached Verified Complaint are true and correct to the best of my knowledge, information and belief, under penalty of perjury under the laws of the United States of America.

A handwritten signature in dark ink, appearing to read 'Thomas Macari', is written over a horizontal line.

THOMAS MACARI