IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, Plaintiff, vs. DENTSPLY INTERNATIONAL, INC., Defendant.	)	Civil Action No. 99-005 (MMS)

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Fed. R. Civ. P. 34, the Plaintiff requests Defendant to produce and permit inspection and copying of the documents listed in this request. The inspection and performance of related acts shall be made at a site agreed upon by the parties, within 30 days of service of this request.

I.

DEFINITIONS

1. "Agreement" means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

2. "Any" means one or more.

3. "Base materials" means acrylic or any similar substance used in connection with prefabricated artificial teeth to make dentures.

4. "Communication" means any disclosure, transfer, or exchange of information or opinion, however made.

5. “Dealer” means any person that distributes any products of any other person or purchases or acquires any such product for resale to any other person, such as a dental laboratory, dentist, dental school or government entity.

6. “Dental laboratory” means any person that prepares, constructs, assembles or otherwise fills an order or prescription from a dentist for dentures or any other removable or fixed dental prosthetic device, and includes any group, chain or organization of dental laboratories.

7. “Dentsply” means Dentsply International, Inc., each of its predecessors (including Gendex Corporation), successors, divisions, subsidiaries, and affiliates, located both in the United States and in any other country, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each joint venture to which any of them is a party, and all present and former directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

8. “Denture” means artificial teeth fixed in a base material used to replace some or all of a patient’s natural teeth.

9. “Document” means any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone

conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer print-outs.

The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term "control" as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

10. "Exclusive arrangement with a dealer" means any proposed or actual agreement, arrangement, policy, program, practice, term or condition of your company that:

a. requires any dealer to limit the scope or intensity of effort, or refrain from service, as a dealer for the products of any other person; or

b. has the purpose or effect of encouraging any dealer to limit the scope or intensity of effort, or refrain from service, as a dealer for the products of any other person.

11. "Exclusive arrangement with a dental laboratory or dentist" means any proposed or actual agreement, arrangement, policy, program, practice, term or condition of your company that:

a. requires any dental laboratory or dentist to limit the use of, or refrain from using, the products of any other person; or

b. has the purpose or effect of encouraging any dental laboratory or dentist to limit the use of, or refrain from using, the products of any other person.

12. "Identify" or "identity" means to state or a statement of:

a. in the case of a person other than a natural person, its name, the address of its principal place of business (including zipcode), its telephone number, and the name of its chief executive officer, as well as, if it has a person other than a natural person that ultimately controls it, that other person's name, the address of that person's principal place of business (including zipcode), that other person's telephone number, and the name of that other person's chief executive officer;

b. in the case of a natural person, his or her name, business address and telephone number, employer, and title or position;

c. in the case of a communication, its date, type (e.g., telephone conversation or discussion), the place where it occurred, the identity of the person who made the communication, the identity of the person who received the communication, the identity of each other person when it was made, and the subject matter discussed;

d. in the case of a document, the title of the document, the author, the title or position of the author, the addressee, each recipient, the type of document, the subject matter, the date of preparation, and its number of pages; and

e. in the case of an agreement, its date, the place where it occurred, the identity of all persons who were parties to the agreement, the identity of each person who has

knowledge of the agreement and all other persons present when it was made, and the subject matter of the agreement.

13. "Including" means including, but not limited to.

14. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

15. "Prefabricated artificial teeth" or "teeth" means any prefabricated (as opposed to dental laboratory or dentist constructed) product used in a denture or as an implant to replace one or more natural teeth.

16. "Relating to" means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

17. "Relevant time period" means the time period stated in paragraph 1 of the Instructions.

18. "Shade guide" means any device used to match the color or shade of prefabricated artificial teeth to a patient's natural teeth for the specifications contained in a dentist's prescription for dentures or any other removable or fixed dental prosthetic device.

19. "Year" means calendar year or the twelve-month period on which your business records are based; if the latter is used in responding to a document request, specify the twelve month period used.

20. "You," "your" or "your company" means Dentsply.

21. The singular form of a noun or pronoun shall be considered to include within its

meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted. The term "or" shall mean "and" and vice-versa, as necessary to bring within the scope of the following document requests all information or documents that would be excluded absent this definition.

II.

INSTRUCTIONS

1. Unless otherwise specified, the documents called for by these document requests are documents in your possession, custody or control that were applicable, effective, prepared, written, generated, sent, dated, or received at any time since January 1, 1985. Documents that have been produced previously by Dentsply in response to Civil Investigative Demand ("CID") Nos. 13009 or 16446 need not be produced again.

2. Unless otherwise specified, the documents called for by these document requests are limited in scope to those responsive documents relating to supplying, manufacturing, distributing, selling, or advertising or promoting products in the United States. For any paragraph that requests documents relating to supplying, manufacturing, distributing, selling, or advertising or promoting products in any country other than the United States, the documents called for include all documents in your possession, custody or control maintained in both the United States or in any other country.

3. Pursuant to Fed. R. Civ. P. 26(e), you are under a duty seasonably to supplement any response to this request for production for which you learn that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to us during the discovery process or in writing.

4. All documents that respond, in whole or in part, to any part or clause of any paragraph of these document requests shall be produced in their entirety, including all attachments and enclosures. Only one copy need be produced of documents that are responsive to more than one paragraph or are identical except for the person to whom it is addressed if you indicate the persons or group of persons to whom such documents were distributed. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Please place the documents called for by each paragraph in a separate file folder or other enclosure marked with Dentsply's name and the paragraph to which such documents respond, and if any document is responsive to more than one request, indicate each request to which it responds.

5. In producing documents consisting of electronically stored data in machine-readable form in response to any document request, provide such data in a form that does not require specialized or proprietary hardware or software. Data files should be in sequential format, also known as ASCII files or flat files, with the data fields in fixed-column positions. For each data file provided, the following information should be included: a record layout, a short narrative description of the contents of the file, translation of any coded fields, the number of records in the file, and a printout of the first 100 records in report format. A record layout must contain the following pieces of information: name of the field, starting and ending position in the record, length of the field, and characteristics of the field (e.g., packed decimal, zoned decimal, alphanumeric).

The magnetic media should be 9-track tapes or PC diskettes of 5-1/4 or 3-1/2 inch. Data can be accepted in either ASCII or EBCDIC format. Do not convert the data between ASCII and

EBCDIC formats. The 9-track tapes should be unlabeled. The record length, blocksize and tape density must be provided. The tapes should be written with generic copy utilities rather than backup programs from a specific operating system. Where PC files are too large for one diskette, DOS BACKUP disk sets will be acceptable so long as they are accompanied by backup listings. Backup listings may be hard copy or ASCII files on non-backup diskettes. A backup listing must provide the path name necessary to individually restore each file in the backup. Compression utilities are acceptable so long as the utility is provided and such provision does not violate licensing or copyright laws.

6. For any document withheld under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the document by author, addressee, date, number of pages, and subject matter; specify the nature and basis of the claimed privilege and the paragraph of this demand for documents to which the document is responsive; and identify each person to whom the document or its contents, or any part thereof, has been disclosed.

7. For any document responsive to these document requests which is known to have been destroyed or lost, or is otherwise unavailable, identify each such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document, including the location of such document when last in your possession, custody, or control, and the date and manner of its disposition.

8. In responding to any document request that calls for documents relating to "any person," or "each person," include information or documents relating to your company, if

applicable.

9. Each document that is written in whole or in part in any language other than English or that contains any marginal notations in such a language must be accompanied by a certified verbatim English language translation, and all existing English language versions, of all such writings and notations.

10. No agreement, understanding, or stipulation by the Department of Justice or any of its representatives purporting to modify, limit, or otherwise vary these document requests shall be valid or binding on the Department of Justice unless confirmed or acknowledged in writing (or made of record in open court) by a duly authorized representative thereof.

III.

DOCUMENTS DEMANDED

1. Your company's certificate of incorporation, bylaws, rules, regulations, procedures, and any proposed amendments thereto, if any of these documents have been modified, amended or are in any way different from those produced in response to CID No. 13009.

2. One copy of each of your most current employee lists and organizational charts.

3. One copy of each annual or other periodic report of your company, separately for your company and each of its divisions or subsidiaries.

4. All minutes, recordings, summaries, or reports of meetings, whether formal or informal, of the members of each board of directors of your company and of each committee or subgroup of each board.

5. All minutes, recordings, summaries, or reports of meetings, whether formal or

informal, of the members of each committee, group or subgroup of management employees of your company, separately for your company and each of its divisions or subsidiaries.

6. All documents that report, describe, summarize, analyze, discuss or comment on competition from, or the marketing or sales strategies, market shares of projected market shares, market conditions or the profitability of, any company, including your company, in the supply, manufacture, distribution or sale of prefabricated artificial teeth or dentures, including all strategic plans, long-range plans and business plans of any such company.

7. All documents that report, describe, summarize, analyze, discuss, or comment on the quality (including the shade, color, aesthetics, shape, wear resistance, or ease of installation) of any company's, including your company's, prefabricated artificial teeth, including any comparison of the quality of any two or more company's teeth.

8. All documents that report, describe, summarize, analyze, discuss or comment on the pricing of your company's artificial teeth or dentures, including but not limited to price lists, price schedules, price changes, price announcements, price quotations, proposals or bids, rebate offers or programs, or discount sheets (this paragraph specifically excludes bills, invoices and any other document reflecting only specific transactions).

9. All documents that report, describe, summarize, analyze, discuss or comment on the prices of any other company for prefabricated artificial teeth or dentures, or any bid, offer, discount, or rebate of your company in connection with the sale of prefabricated artificial teeth that responds to, considers, evaluates or refers to such prices of another company, including but not limited to each version of your company's Competitive Price Deviation Form and each partially or fully completed Competitive Price Deviation Form.

10. All documents that report, describe, summarize, analyze, discuss or comment on the distribution, sale, or gift by your company of prefabricated artificial teeth, base materials or shade guides to dental schools or government entities.

11. All documents that set forth, report, describe, summarize, analyze, discuss or comment on:

a. the methods, channels, strategies, means, or policies of distributing products to dealers, dental laboratories, or dentists;

b. the selection, retention, monitoring, supervision or termination of dealers or dental laboratories generally or any specific dealer or dental laboratory;

c. exclusive arrangements with dealers or dental laboratories; or

d. the utility, advantages, or disadvantages of distributing teeth through dealers, including the various services dealers provide to dental laboratories or their suppliers of dental products, including your company;

e. the ability and availability of dealers, who sell and distribute dental products exclusively or primarily to dentists, or whose focus is on selling and distributing dental products to dentists, to sell or distribute prefabricated artificial teeth to dental laboratories, or the likelihood of such dealers to begin, or increase their efforts, to sell or distribute prefabricated artificial teeth to dental laboratories;

f. the ability, availability, or likelihood of any dental laboratory to sell or distribute prefabricated artificial teeth to other dental laboratories;

g. the feasibility, costs, advantages, disadvantages, or any other considerations relating to the direct sale or distribution of dental products to dental laboratories

by any company, including your company;

h. the return of complete or incomplete sets of prefabricated artificial teeth by dealers to your company;

i. any policies or practices involving credit, exchange accounts or other amounts maintained by any company, including your company, for any dealer that has returned complete or incomplete sets of prefabricated artificial teeth; or

j. the purchase by your company of the prefabricated artificial teeth or shade guides of any other company or the exchange of all or part of any dealer's or dental laboratory's inventory or stock of any other company's prefabricated artificial teeth or shade guides for any of your company's products.

12. All documents relating to any currently or previously contemplated plan or strategy by your company to sell or distribute prefabricated artificial teeth directly to dental laboratories, including whether or not the plan or strategy was implemented and the reasons why it was or was not.

13. All documents relating to Dentsply/York Division Dealer Criteria (see e.g., DS 040148 produced in response to CID No. 13009), and any pre-existing, related policies or practices now embodied in the Dealer Criteria, without regard to the time limitation specified in Instruction No. 1.

14. All agreements between your company and any dealer or dental laboratory (to the extent such agreements are identical except for the identity of the dealer or dental laboratory and the term of the agreement, you may produce a single copy of the agreement and identify each dealer or dental laboratory who is party to the agreement and term of that version of the

agreement), and all dealer or dental laboratory programs.

15. All documents relating to the acquisition of any dealer by another dealer, or the merger or consolidation of any two or more dealers.

16. All documents relating to any communication with a dealer or dental laboratory regarding the terms or conditions for that dealer or dental laboratory purchasing, distributing, acquiring for resale, or using your products generally, or relating to any rebates, discounts or other special terms offered to a dealer or dental laboratory in connection with a specific bid, proposal or transaction (this paragraph specifically excludes bills and invoices).

17. All documents that report, describe, summarize, analyze, discuss, or comment on the training or educating of dealers, dental laboratories, or dentists with respect to the sale, marketing, distribution, advertisement, promotion or use of prefabricated artificial teeth or other of your company's products.

18. All documents relating to the number of visits (either annually, monthly or weekly) by your sales representatives to each dealer to whom you sell prefabricated artificial teeth, including co-traveling by your sales representatives with each such dealer's sales representative.

19. All documents that list, report, describe, summarize, analyze, discuss, or comment on any dental laboratory customers that you have identified for or provided to your dealers.

20. All documents relating to any litigation or potential litigation with any dealer or dental laboratory (to the extent such information is called for, you may defer production of products of discovery).

21. All documents that report, describe, summarize, analyze, discuss, list or comment on any dealer that does not distribute your company's prefabricated artificial teeth, base materials

or shade guides.

22. All documents that report, describe, summarize, analyze, discuss or comment on competition from, or the marketing or sales strategies, market shares of projected market shares, market conditions or the profitability of, any company, including your company, in the supply, manufacture, distribution or sale of prefabricated artificial teeth or dentures in any country other than the United States, including all strategic plans, long-range plans and business plans of any such company.

23. All documents that report, describe, summarize, analyze, discuss or comment on the following for any country outside of the United States:

a. the methods, channels, strategies, means, or policies of distributing prefabricated artificial teeth;

b. the selection, retention, monitoring, supervision or termination of dealers or dental laboratories generally or any specific dealer or dental laboratory;

c. exclusive arrangements with dealers, dental laboratories, or dentists; or

d. the utility, advantages, or disadvantages of distributing teeth through dealers, including the various services dealers provide to dental laboratories or their suppliers of dental products, including your company.

24. All documents relating to any communication between your company and the following persons or dental laboratories identified in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure, or that report, describe, summarize, analyze, discuss, or comment on such persons or dental laboratories:

a. Renny Challoner, Lords Dental Studio

b. Dr. L.T. Armstrong, Armstrong Dental Laboratory

c. Gerry Mariacher, National Dentex

d. George Obst, Dental Services Corp.

e. Jim Boshoven, Davis Dental Laboratory

f. Danny Wong, Americus Dental Laboratories

g. Greg Thayer, Thayer Dental Laboratory

h. Phillip Myer, Associated Dental Laboratory

i. Bruce Colgin, Dental Arts Laboratories

j. Bob and Fred Fox, Fox Dental Laboratory

k. Rick Peoples, Peoples Dental Laboratory

l. Ralph Langer, Langer Dental Laboratory

m. John Kirdahy, Aim Dental Laboratory

25. All documents that report, describe, summarize, analyze, discuss, or comment on "the direct distribution of dental products and supplies to dental laboratories," as referenced in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure, by any division of your company, including Ceramco, Inc., or by any other company.

26. All documents contained in the files of each Ceramco, Inc., employee identified in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure relating to "the direct distribution of dental products and supplies to dental laboratories."

27. All documents contained in the files of each current and former Dentsply employee identified in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure relating to "Dentsply's manufacture, marketing and sale of artificial teeth products."

28. All documents relating to "Dentsply's distribution practices for Trubyte brand artificial teeth products" as referenced in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure.

29. All documents relating to "Dentsply's efforts to market, advertise, and promote Trubyte brand artificial teeth products" as referenced in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure.

30. All documents relating to "[s]ales data concerning Dentsply's Trubyte brand artificial teeth products, including costs, pricing, incentives, discounts, rebates and exchange accounts" as referenced in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure.

31. All documents relating to "[s]trategic planning documents including marketing plans, business plans, long range plans and forecasts" as referenced in Defendant Dentsply International, Inc.'s Fed. R. Civ. P. 26(a)(1) Disclosure.

32. Electronically stored or machine-readable documents sufficient to show, separately for each dealer to whom your company has sold or delivered prefabricated artificial teeth or other products, and separately for each year of the relevant period:

a. total dollar sales of all products;

b. dollar sales separately for each division or subsidiary of your company;

c. dollar and unit sales of prefabricated artificial teeth;

d. the year-end dollar amount of the credit owed by your company to each dealer that has returned complete or incomplete sets of prefabricated artificial teeth to your company; or

e. the year-end dollar amount of the inventory of your company's teeth either owned by the dealer or any dental laboratory to which the dealer supplies teeth, or placed with the dealer or any such dental laboratory on consignment from your company or the dealer.

33. Electronically stored or machine-readable documents relating to dealer sales of your company's products by zip code since January 1, 1997, as reported to you by your dealers under Dentsply/York Division Dealer Criterion Number 9 (see e.g., DS 040148 produced in response to CID No. 13009).

34. All documents relating to your company's policies or procedures for compliance with any United States federal or state antitrust law in connection with the supply, manufacture, distribution, sale, or advertisement or promotion of the sale of prefabricated artificial teeth, base materials, dentures, or shade guides, or any guidelines or standards of conduct of your company relating to compliance with such laws in connection with such activity.

35. All documents relating to your company's policy concerning retention, storage, or destruction of any document.

36. All documents prepared by any person in connection with your company's response to these document requests.

37. Each document index your company prepares in responding to these document requests.

Respectfully submitted,

March 2, 1999

FOR PLAINTIFF
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