

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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IVOCLAR VIVADENT AG, and  
IVOCLAR VIVADENT, INC.

Plaintiffs,

v.

Civil No. \_\_\_\_\_

POLIDENTAL ZARAGOZA S.L.,

Defendant.

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**COMPLAINT**

Ivoclar Vivadent AG (“Ivoclar AG”) and Ivoclar Vivadent, Inc. (“Ivoclar Inc.”)  
(collectively, the “Plaintiffs”), for their Complaint against Polidental Zaragoza S.L.  
(“Polidental”), allege as follows:

**The Parties**

1. Ivoclar AG is a Liechtenstein company with a principal place of business at Bendererstrasse 2, 9494 Schaan, Liechtenstein. It is a leading developer and supplier of dental products around the world.

2. Ivoclar Inc., a subsidiary of Ivoclar AG, is a Delaware corporation with a principal place of business at 175 Pineview Drive, Amherst, NY 14228. Ivoclar Inc. is a leading developer and supplier of dental products.

3. Upon information and belief, Polidental is a Spanish corporation with places of business in Malaga, Spain and Tampa, Florida. Polidental distributes and sells certain dental products throughout the United States, including in New York.

**Jurisdiction and Venue**

4. This is a patent infringement action brought under the patent laws of the United States, 35 U.S.C. Section 101, *et seq.*, including 35 U.S.C. Section 271.

5. The Plaintiffs seek damages for patent infringement and an injunction preventing Polidental from making, using, selling, or offering to sell, and from inducing others to make, use, sell, or offer to sell, the Plaintiffs' patented technology.

6. This Court has subject matter jurisdiction under 28 U.S.C. Sections 1331 and 1338(a).

7. This Court has personal jurisdiction over Polidental because Polidental regularly does and solicits business in New York and in this judicial district. Polidental has sold or offered to sell products that infringe the asserted patents, as further alleged below, in New York and in this judicial district. Polidental also manages and controls an interactive website at [www.polidental.com](http://www.polidental.com), through which Polidental markets and sells the infringing products to customers, including those residing in New York and in this judicial district.

8. Venue in this district is proper under 28 U.S.C. Sections 1400 and 1391 because Polidental is subject to personal jurisdiction in this district. Polidental also has committed acts of patent infringement in this district.

**First Claim for Relief**  
**(Infringement of the '291 Patent)**

9. The Plaintiffs repeat the allegations set forth in paragraphs 1 through 8.

10. On October 19, 2010, the United States Patent and Trademark Office (the “USPTO”) issued U.S. Patent No. 7,816,291 (the “’291 Patent”), entitled “Lithium Silicate Materials.” A copy of the ’291 Patent is attached as **Exhibit 1**.

11. Ivoclar AG is the owner of all rights, title, and interest in the ’291 patent.

12. Ivoclar Inc. is an exclusive licensee of the ’291 Patent, with the right to enforce the ’291 Patent. Ivoclar Inc. acts as the exclusive marketer and seller of products that embody the ’291 Patent in the United States.

13. Polidental has infringed and continues to infringe the ’291 Patent by making, using, selling, and/or offering for sale, in this district and elsewhere, certain dental restoration products, including but not limited to, Polidental’s “Disimax” product line.

14. Polidental’s actions in infringing the ’291 Patent have been, and continue to be, willful, deliberate, and/or in conscious disregard of the Plaintiffs’ rights, making this an exceptional case within the meaning of 35 U.S.C. Section 285.

15. As a result of Polidental’s infringing activities, the Plaintiffs have sustained damages in an amount to be proven at trial.

16. Polidental will continue its infringing activities unless and until it is restrained and enjoined by this Court.

17. Polidental's infringing activities have caused, and will continue to cause, the Plaintiffs irreparable harm for which there is no adequate remedy at law.

**Second Claim for Relief**  
**(Infringement of the '948 Patent)**

18. The Plaintiffs repeat the allegations set forth in paragraphs 1 through 17.

19. On January 18, 2011, the USPTO issued U.S. Patent No. 7,871,948 (the "'948 Patent"), entitled "Lithium Silicate Glass Ceramic." A copy of the '948 Patent is attached as **Exhibit 2**.

20. Ivoclar AG is the owner of all rights, title, and interest in the '948 Patent.

21. Ivoclar Inc. is an exclusive licensee of the '948 Patent, with the right to enforce the '948 Patent. Ivoclar Inc. acts as the exclusive marketer and seller of products that embody the '948 Patent in the United States.

22. Polidental has infringed and continues to infringe the '948 Patent by making, using, selling, and/or offering for sale, in this district and elsewhere, certain dental restoration products, including but not limited to, Polidental's "Disimax" product line.

23. Polidental's actions in infringing the '948 Patent have been, and continue to be, willful, deliberate, and/or in conscious disregard of the Plaintiffs' rights, making this an exceptional case within the meaning of 35 U.S.C. Section 285.

24. As a result of Polidental's infringing activities, the Plaintiffs have sustained damages in an amount to be proven at trial.

25. Polidental will continue its infringing activities unless and until it is restrained and enjoined by this Court.

26. Polidental's infringing activities have caused, and will continue to cause, the Plaintiffs irreparable harm for which there is no adequate remedy at law.

**Third Claim for Relief**  
**(Infringement of the '358 Patent)**

27. The Plaintiffs repeat the allegations set forth in paragraphs 1 through 26.

28. On October 25, 2011, the USPTO issued U.S. Patent No. 8,042,358 (the " '358 Patent"), entitled "Lithium Silicate Materials." A copy of the '358 Patent is attached as **Exhibit 3**.

29. Ivoclar AG is the owner of all rights, title, and interest in the '358 Patent.

30. Ivoclar Inc. is an exclusive licensee of the '358 Patent, with the right to enforce the '358 Patent. Ivoclar Inc. acts as the exclusive marketer and seller of products that embody the '358 Patent in the United States.

31. Polidental has infringed and continues to infringe the '358 Patent by making, using, selling, and/or offering for sale, in this district and elsewhere, certain dental restoration products, including but not limited to, Polidental's "Disimax" product line.

32. Polidental's actions in infringing the '358 Patent have been, and continue to be, willful, deliberate, and/or in conscious disregard of the Plaintiffs' rights, making this an exceptional case within the meaning of 35 U.S.C. Section 285.

33. As a result of Polidental's infringing activities, the Plaintiffs have

sustained damages in an amount to be proven at trial.

34. Polidental will continue its infringing activities unless and until it is restrained and enjoined by this Court.

35. Polidental's infringing activities have caused, and will continue to cause, the Plaintiffs irreparable harm for which there is no adequate remedy at law.

**Fourth Claim for Relief**  
**(Infringement of the '021 Patent)**

36. The Plaintiffs repeat the allegations set forth in paragraphs 1 through 35.

37. On November 1, 2011, the USPTO issued U.S. Patent No. 8,047,021 (the "'021 Patent"), entitled "Lithium Silicate Materials." A copy of the '021 Patent is attached as **Exhibit 4.**

38. Ivoclar AG is the owner of all rights, title, and interest in the '021 Patent.

39. Ivoclar Inc. is an exclusive licensee of the '021 Patent, with the right to enforce the '021 Patent. Ivoclar Inc. acts as the exclusive marketer and seller of products that embody the '021 Patent in the United States.

40. Polidental has infringed and continues to infringe the '021 Patent by making, using, selling, and/or offering for sale, in this district and elsewhere, certain dental restoration products, including but not limited to, Polidental's "Disimax" product line.

41. Polidental's actions in infringing the '021 Patent have been, and continue to be, willful, deliberate, and/or in conscious disregard of the Plaintiffs' rights, making this an exceptional case within the meaning of 35 U.S.C. Section 285.

42. As a result of Polidental's infringing activities, the Plaintiffs have sustained damages in an amount to be proven at trial.

43. Polidental will continue its infringing activities unless and until it is restrained and enjoined by this Court.

44. Polidental's infringing activities have caused, and will continue to cause, the Plaintiffs irreparable harm for which there is no adequate remedy at law.

**Fifth Claim for Relief**  
**(Infringement of the '756 Patent)**

45. The Plaintiffs repeat the allegations set forth in paragraphs 1 through 44.

46. On May 21, 2013, the USPTO issued U.S. Patent No. 8,444,756 (the "'756 Patent"), entitled "Lithium Silicate Materials." A copy of the '756 Patent is attached as **Exhibit 5**.

47. Ivoclar AG is the owner of all rights, title, and interest in the '756 Patent.

48. Ivoclar Inc. is an exclusive licensee of the '756 Patent, with the right to enforce the '756 Patent. Ivoclar Inc. acts as the exclusive marketer and seller of products that embody the '756 Patent in the United States.

49. Polidental has infringed and continues to infringe the '756 Patent by making, using, selling, and/or offering for sale, in this district and elsewhere, certain dental restoration products, including but not limited to, Polidental's "Disimax" product line.

50. Polidental's actions in infringing the '756 Patent have been, and continue to be, willful, deliberate, and/or in conscious disregard of the Plaintiffs' rights, making this an

exceptional case within the meaning of 35 U.S.C. Section 285.

51. As a result of Polidental's infringing activities, the Plaintiffs have sustained damages in an amount to be proven at trial.

52. Polidental will continue its infringing activities unless and until it is restrained and enjoined by this Court.

53. Polidental's infringing activities have caused, and will continue to cause, the Plaintiffs irreparable harm for which there is no adequate remedy at law.

**Sixth Claim for Relief**  
**(Infringement of the '078 Patent)**

54. The Plaintiffs repeat the allegations set forth in paragraphs 1 through 53.

55. On February 2, 2016, the USPTO issued U.S. Patent No. 9,248,078 (the "'078 Patent"), entitled "Lithium Silicate Materials." A copy of the '078 Patent is attached as **Exhibit 6.**

56. Ivoclar AG is the owner of all rights, title, and interest in the '078 Patent.

57. Ivoclar Inc. is an exclusive licensee of the '078 Patent, with the right to enforce the '078 Patent. Ivoclar Inc. acts as the exclusive marketer and seller of products that embody the '078 Patent in the United States.

58. Polidental has infringed and continues to infringe the '078 Patent by making, using, selling, and/or offering for sale, in this district and elsewhere, certain dental restoration products, including but not limited to, Polidental's "Disimax" product line.



59. Polidental's actions in infringing the '078 Patent have been, and continue to be, willful, deliberate, and/or in conscious disregard of the Plaintiffs' rights, making this an exceptional case within the meaning of 35 U.S.C. Section 285.

60. As a result of Polidental's infringing activities, the Plaintiffs have sustained damages in an amount to be proven at trial.

61. Polidental will continue its infringing activities unless and until it is restrained and enjoined by this Court.

62. Polidental's infringing activities have caused, and will continue to cause, the Plaintiffs irreparable harm for which there is no adequate remedy at law.

**Jury Demand**

63. Ivoclar demands trial by jury on all matters triable by jury.

**WHEREFORE**, Ivoclar is entitled to judgment:

(1) declaring that Polidental has infringed one or more claims of the '291, '948, '358, '021, '756, and '078 Patents;

(2) granting an injunction, precluding Polidental, its officers, directors, agents, servants, employees, attorneys, subsidiaries, affiliates, and all those acting in concert with them, from making, using, selling, and/or offering for sale any products that infringe one or more claims of the '291, '948, '358, '021, '756, and '078 Patents, or otherwise directly or indirectly committing further acts of infringement of these patents;

(3) ordering an accounting for damages arising from Polidental's acts of

patent infringement;

(4) awarding damages, including treble damages, under 35 U.S.C.

Sections 284 and 285, with interest;

(5) finding that Polidental's infringement is willful, that this is an exceptional case, and awarding reasonable attorneys' fees to the Plaintiffs under 35 U.S.C. Section 285; and

(6) awarding such further relief as this Court deems proper.

Dated: March 21, 2017

**HODGSON RUSS LLP**

*Attorneys for Ivoclar Vivadent AG and  
Ivoclar Vivadent Inc.*

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