

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA, PETITIONER

v.

IMAGE PROCESSING TECHNOLOGIES LLC, ET AL.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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APPENDIX TO THE PETITION FOR A WRIT OF CERTIOARI

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JEFFREY B. WALL  
Acting Solicitor General  
Counsel of Record  
Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

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NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**IMAGE PROCESSING TECHNOLOGIES LLC,**  
*Appellant*

v.

**SAMSUNG ELECTRONICS CO., LTD., SAMSUNG  
ELECTRONICS AMERICA, INC.,**  
*Appellees*

**UNITED STATES,**  
*Intervenor*

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2018-2156

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
00353.

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**IMAGE PROCESSING TECHNOLOGIES LLC,**  
*Appellant*

v.

**SAMSUNG ELECTRONICS CO., LTD., SAMSUNG  
ELECTRONICS AMERICA, INC.,**  
*Cross-Appellants*



**UNITED STATES,**  
*Intervenor*

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2019-1408, 2019-1485

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2017-01218.

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**ORDER**

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PER CURIAM.

In light of this court's decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 18-2140 (Fed. Cir. Oct. 31, 2019), and the fact that Image Processing Technologies LLC has raised an Appointments Clause challenge in its opening brief in both of the above captioned cases,

IT IS ORDERED THAT:

(1) The oral arguments scheduled for January 6, 2020 are cancelled and the cases are removed from the calendar.

(2) The Patent Trial and Appeal Board's decisions in No. IPR2017-00353 and No. IPR2017-01218 are vacated and the cases are remanded to the Board for proceedings consistent with the court's decision in *Arthrex*.

FOR THE COURT

December 5, 2019  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**EUGENE H. LUOMA,**  
*Appellant*

v.

**GT WATER PRODUCTS, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2315

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 95/001,754.

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**ON MOTION**

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Before MOORE, O'MALLEY, and STOLL, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**ORDER**

Eugene H. Luoma moves to vacate the decision of the  
Patent Trial and Appeal Board and remand for further

proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Mr. Luoma states that GT Water Products, Inc. “neither consents nor objects” to the motion and “takes the position that the patent should remain invalid.” The Director of the United States Patent and Trademark Office intervenes and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) Mr. Luoma’s motion to vacate and remand is granted. The Patent Trial and Appeal Board’s decision is vacated, and the case is remanded to the Board for proceedings consistent with this court’s decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 17, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PFIZER INC.,**  
*Appellant*

v.

**MERCK SHARP & DOHME CORP., SANOFI  
PASTEUR INC., SK CHEMICALS CO., LTD.,**  
*Appellees*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-1871, -1873, -1875, -1876, -2224

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2017-  
02131, IPR2017-02132, IPR2017-02136, IPR2017-02138,  
and IPR2018-00187.

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**ON MOTION**

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Before MOORE, O'MALLEY, and STOLL, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**O R D E R**

Pfizer Inc. moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Merck Sharp & Dohme Corp., Sanofi Pasteur Inc., and SK Chemicals Co. Ltd. oppose the motion. The Director of the United States Patent and Trademark Office intervenes and requests that the court hold any decision on the motion in abeyance pending en banc consideration of *Arthrex*.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 21, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**ALAN STUART, Trustee for the Cecil G. Stuart and  
Donna M. Stuart Revocable Living Trust Agree-  
ment, CDS DEVELOPMENT LLC,**  
*Appellants*

v.

**RPM INTERNATIONAL, INC., RUST-OLEUM  
CORPORATION,**  
*Cross-Appellants*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-1994, -2238

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
02158.

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**ON MOTION**

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Before MOORE, O'MALLEY, and STOLL, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**ORDER**

Appellants move to vacate the final written decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Cross-Appellants oppose the motion and move for a stay. The Director of the United States Patent and Trademark Office intervenes and requests that the court hold any decision on the motion in abeyance pending en banc consideration of *Arthrex*.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) Appellants' motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) The motion to stay is denied.

(4) Each side shall bear its own costs.

FOR THE COURT

January 21, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**VILOX TECHNOLOGIES, LLC,**  
*Appellant*

v.

**UNIFIED PATENTS INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2057

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00044.

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**ON MOTION**

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Before MOORE, O'MALLEY, and STOLL, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**O R D E R**



Vilox Technologies, LLC moves unopposed to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). The Director of the United States Patent and Trademark Office intervenes and requests that the court hold any decision on the motion in abeyance pending en banc consideration of *Arthrex*.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) Vilox's motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 21, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

s32

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**VAPORSTREAM, INC.,**  
*Appellant*

v.

**SNAP INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2231, -2290, -2337, 2020-1030

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00200, IPR2018-00312, IPR2018-00369, and IPR2018-  
00458.

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**VAPORSTREAM, INC.,**  
*Appellant*

v.

**SNAP INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2339

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00404.

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**ON MOTION**

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Before MOORE, O'MALLEY, and STOLL, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**O R D E R**

In the above-captioned appeals, Vaporstream, Inc. moves to vacate the decisions of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Snap, Inc. opposes the motions. The Director of the United States Patent and Trademark Office intervenes and requests that the court hold any decision on the motions in abeyance pending en banc consideration of *Arthrex*.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official captions are reflected above.

(2) The motions to vacate and remand are granted. The Patent Trial and Appeal Board's decisions are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 23, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

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NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DOCUMENT SECURITY SYSTEMS, INC.,**  
*Appellant*

v.

**SEOUL SEMICONDUCTOR CO., LTD., SEOUL  
SEMICONDUCTOR, INC., CREE, INC.,**  
*Appellees*

**ANDREI IANCU, Director, U. S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2281

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00333 and IPR2018-01205.

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**ON MOTION**

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Before O'MALLEY, CHEN, and STOLL, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**O R D E R**

Document Security Systems, Inc. moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). The appellees oppose. The Director of the United States Patent and Trademark Office intervenes and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director is added as intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 23, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**VIRNETX INC.,**  
*Appellant*

v.

**CISCO SYSTEMS, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-1671

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 95/001,679.

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**ON MOTION**

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Before MOORE, O'MALLEY, and CHEN, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**ORDER**

VirnetX Inc. moves to vacate the decision of the Patent  
Trial and Appeal Board and remand for further

proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Cisco Systems, Inc. opposes the motion. The Director of the United States Patent and Trademark Office intervenes and opposes.

Although this appeal arises out of an *inter partes* reexamination and not an *inter partes* review as was at issue in *Arthrex*, we see no material difference in the relevant analysis. We therefore grant VirnetX's motion.

Accordingly,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) VirnetX's motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 24, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**CONCERT PHARMACEUTICALS, INC.,**  
*Appellant*

v.

**INCYTE CORPORATION,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2011

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
01256.

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**ON MOTION**

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Before PROST, *Chief Judge*, MOORE and O'MALLEY, *Circuit  
Judges.*

O'MALLEY, *Circuit Judge.*

**O R D E R**

Concert Pharmaceuticals, Inc. moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Incyte Corp. opposes the motion. The Director of the United States Patent and Trademark Office intervenes and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 24, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

---

**AGROFRESH, INC.,**  
*Appellant*

v.

**UPL LIMITED,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2243

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
01919.

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**ON MOTION**

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Before NEWMAN, MOORE, and TARANTO, *Circuit Judges*.  
MOORE, *Circuit Judge*.

**O R D E R**

AgroFresh, Inc. moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). The Director of the United States Patent and Trademark Office intervenes and requests that the court hold the motion in abeyance pending en banc consideration of *Arthrex*. UPL Limited opposes the motion and alternatively asks the court to hold the motion in abeyance pending *Arthrex*.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

January 24, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**POLARIS INNOVATIONS LIMITED,**  
*Appellant*

v.

**KINGSTON TECHNOLOGY COMPANY, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1202

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2016-  
01622.

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**ORDER**

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PER CURIAM.

In light of this court's decision in *Arthrex, Inc. v. Smith  
& Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), and the

fact that Polaris Innovations Limited raised an Appointments Clause challenge in its opening brief in the above captioned case,

IT IS ORDERED THAT:

(1) The oral argument scheduled for March 2, 2020 is cancelled and the case is removed from the calendar.

(2) The Patent Trial and Appeal Board's decision in No. IPR2016-01622 is vacated and the case is remanded to the Board for proceedings consistent with the court's decision in *Arthrex*.

FOR THE COURT

January 27, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**POLARIS INNOVATIONS LIMITED,**  
*Appellant*

v.

**KINGSTON TECHNOLOGY COMPANY, INC.,**  
*Appellee*

**UNITED STATES,**  
*Intervenor*

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2018-1768

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Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2016-01621.

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Decided: January 31, 2020

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MATTHEW D. POWERS, Tensegrity Law Group LLP, Redwood Shores, CA, argued for appellant. Also represented by JENNIFER ROBINSON; AZRA HADZIMEHMEDOVIC, AARON MATTHEW NATHAN, SAMANTHA A. JAMESON, McLean, VA; NATHAN NOBU LOWENSTEIN, KENNETH J. WEATHERWAX, Lowenstein & Weatherwax LLP, Los Angeles, CA.

MICHAEL JOHN BALLANCO, Fish & Richardson PC, Washington, DC, argued for appellee. Also represented by DAVID M. HOFFMAN, Austin, TX.

MELISSA N. PATTERSON, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, argued for intervenor. Also represented by COURTNEY DIXON, DENNIS FAN, SCOTT R. MCINTOSH, JOSEPH H. HUNT; THOMAS W. KRAUSE, JOSEPH MATAL, FARHEENA YASMEEN RASHEED, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA.

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Before REYNA, WALLACH, and HUGHES, *Circuit Judges*.

PER CURIAM.

In its opening brief, Polaris Innovations Limited argues that the final written decision at issue in this appeal exceeds the scope of the Patent Trial and Appeal Board's authority and violates the Constitution's Appointments Clause. *See* Appellant's Br. 52 (citing U.S. Const. art. II, § 2, cl. 2). This court recently decided this issue in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Accordingly, the Board's decision in No. IPR2016-01621 is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

**VACATED AND REMANDED**

COSTS

No costs.



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DOCUMENT SECURITY SYSTEMS, INC.,**  
*Appellant*

v.

**SEOUL SEMICONDUCTOR CO., LTD., SEOUL  
SEMICONDUCTOR, INC.,**  
*Appellees*

**ANDREI IANCU, Director, U. S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2430

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00522.

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**ON MOTION**

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Before REYNA, BRYSON, and TARANTO, *Circuit Judges*.  
TARANTO, *Circuit Judge*.

**ORDER**

Document Security Systems, Inc. moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). The appellees oppose. The Director of the United States Patent and Trademark Office intervenes and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director is added as intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

February 03, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**SOUND VIEW INNOVATIONS, LLC,**  
*Appellant*

v.

**UNIFIED PATENTS, LLC,**  
*Appellee*

**ANDREI IANCU, Director, U. S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1154

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00599.

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**ON MOTION**

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Before REYNA, BRYSON, and TARANTO, *Circuit Judges*.  
TARANTO, *Circuit Judge*.

**ORDER**

Sound View Innovations, LLC moves to vacate the de-  
cision of the Patent Trial and Appeal Board and remand

for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Unified Patents, LLC opposes. The Director of the United States Patent and Trademark Office intervenes and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director is added as intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

February 03, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**SOUND VIEW INNOVATIONS, LLC,**  
*Appellant*

v.

**HULU, LLC,**  
*Appellee*

**ANDREI IANCU, Director, U. S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1155

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00864.

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**ON MOTION**

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Before REYNA, BRYSON, and TARANTO, *Circuit Judges*.  
TARANTO, *Circuit Judge*.

**ORDER**

Sound View Innovations, LLC moves to vacate the de-  
cision of the Patent Trial and Appeal Board and remand

for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Hulu, LLC opposes. The Director of the United States Patent and Trademark Office intervenes and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director is added as intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

February 03, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

s35

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**VIRNETX INC.,**  
*Appellant*

v.

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2017-2593, -2594

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2016-  
00693 and IPR2016-00957.

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**ON MOTION**

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Before LOURIE, MOORE, and CHEN, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellant moves to vacate the final written decisions  
of the Patent Trial and Appeal Board and remand for fur-  
ther proceedings in light of *Arthrex, Inc. v. Smith &*

*Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Intervenor opposes the motion. Appellant replies.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) Appellant's motion to vacate and remand is granted. The Patent Trial and Appeal Board's decisions are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

February 27, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

s25



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DRONE-CONTROL, LLC,**  
*Appellant*

v.

**SZ DJI TECHNOLOGY CO., LTD.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2210, -2223, -2276, -2318

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Appeals from the United States Patent and Trade-  
mark Office, Patent Trial and Appeal Board in Nos.  
IPR2018-00205, IPR2018-00206, IPR2018-00207, and  
IPR2018-00208.

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**ON MOTION**

---

Before LOURIE, MOORE, and CHEN, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Drone-Control, LLC moves to vacate the decision of the Patent Trial and Appeal Board and remand for a new hearing before a differently constituted panel in light of this court's recent decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Alternatively, Drone-Control requests that the court grant the parties' joint motion to stay proceedings pending rehearing in *Arthrex*. SZ DJI Technology Co., Ltd. opposes the motion to vacate and remand. The Director of the United States Patent and Trademark Office intervenes and opposes vacatur.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) The motion to stay is denied as moot.

(4) Each side shall bear its own costs.

FOR THE COURT

February 27, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PROMPTU SYSTEMS CORPORATION,**  
*Appellant*

v.

**COMCAST CABLE COMMUNICATIONS, LLC,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2368, -2369

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00342 and IPR2018-00343.

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**ON MOTION**

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Before LOURIE, MOORE, and CHEN, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Promptu Systems Corporation moves to vacate the decisions of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Comcast Cable Communications, LLC and the Director of the United States Patent and Trademark Office oppose the motion.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decisions are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

February 27, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**IRON OAK TECHNOLOGIES, LLC,**  
*Appellant*

v.

**UNIFIED PATENTS INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2388

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00486.

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**ON MOTION**

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Before MOORE, CHEN, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Iron Oak Technologies, LLC moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Unified Patents Inc. and the Director of the United States Patent and Trademark Office oppose the motion. Iron Oak also moves unopposed for an extension of time to file its opening brief.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) The motion for an extension of time is denied as moot.

(3) Each side shall bear its own costs.

FOR THE COURT

February 27, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**HIGH 5 GAMES, LLC,**  
*Appellant*

v.

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1024

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00529.

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**ON MOTION**

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Before LOURIE, MOORE, and CHEN, *Circuit Judges*.

PER CURIAM.

**O R D E R**

High 5 Games, LLC moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). The Direc-

tor of the United States Patent and Trademark Office intervenes and opposes the motion. Aristocrat Technologies, Inc. moves to withdraw from this appeal.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor, and Aristocrat Technologies' motion to withdraw is granted. The revised official caption and short caption are reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

February 27, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

s31



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PROTIVA BIOTHERAPEUTICS, INC.,**  
*Appellant*

v.

**MODERNA THERAPEUTICS, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1183

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00680.

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**ON MOTION**

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Before MOORE, CHEN, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellant moves to vacate the final written decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Appellee and Intervenor oppose the motion.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) Appellant's motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

February 27, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

s25

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PROMPTU SYSTEMS CORPORATION,**  
*Appellant*

v.

**COMCAST CABLE COMMUNICATIONS, LLC,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1253

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. CBM2018-  
00034.

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**ON MOTION**

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Before LOURIE, MOORE, and CHEN, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Promptu Systems Corporation moves to vacate the Patent Trial and Appeal Board's decision and remand in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Comcast Cable Communications, LLC and the Director of the United States Patent and Trademark Office oppose.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

February 27, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**POLARIS INNOVATIONS LIMITED,**  
*Appellant*

v.

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1484

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
00901.

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**SUA SPONTE**

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PER CURIAM.

**ORDER**

In light of this court's decision in *Arthrex, Inc. v. Smith  
& Nephew, Inc.*, No. 18-2140 (Fed. Cir. Oct. 31, 2019) and

the fact that appellant has raised an Appointments Clause challenge in its opening brief in this case,

IT IS ORDERED THAT:

(1) The oral argument scheduled for May 8, 2020 is cancelled and the case is removed from the calendar.

(2) The Patent Trial and Appeal Board's decision in No. IPR2017-00901 is vacated and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

FOR THE COURT

March 24, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**AMGEN INC., AMGEN MANUFACTURING  
LIMITED,**  
*Appellants*

v.

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2171

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2016-  
01542.

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**O R D E R**

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PER CURIAM.

In light of this court's decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 18-2140 (Fed. Cir. Oct. 31, 2019) (reh'g en banc denied Mar. 23, 2020), and the fact that Amgen

Inc. and Amgen Manufacturing Limited have raised an Appointments Clause challenge in the opening brief in the above captioned case,

IT IS ORDERED THAT:

(1) The oral argument scheduled for May 7, 2020 is cancelled and the case is removed from the calendar.

(2) The Patent Trial and Appeal Board's decision in No. IPR2016-01542 is vacated and the case is remanded to the Board for proceedings consistent with the court's decision in *Arthrex*.

FOR THE COURT

March 24, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**STEUBEN FOODS, INC.,**  
*Appellant*

v.

**NESTLE USA, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1082

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2015-  
00249.

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**STEUBEN FOODS, INC.,**  
*Appellant*

v.

**NESTLE USA, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1083

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2014-  
01235.

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**ON MOTION**

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Before PROST, *Chief Judge*, MOORE and O'MALLEY, *Circuit  
Judges*.

O'MALLEY, *Circuit Judge*.

**O R D E R**

In the above-captioned appeals, Steuben Foods, Inc. moves for reconsideration of the court's January 30, 2020 order denying Steuben's motions to vacate the decisions of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Nestlé USA, Inc. opposes the motions for reconsideration. Steuben replies.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motions for reconsideration are granted to the extent that the court's January 30, 2020 order is vacated and the motions to vacate and remand are granted. The Patent Trial and Appeal Board's decisions are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

March 30, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

s32

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**NORTH STAR INNOVATIONS, INC.,**  
*Appellant*

v.

**MICRON TECHNOLOGY, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1295, -1296

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00998 and IPR2018-00999.

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**NORTH STAR INNOVATIONS, INC.,**  
*Appellant*

v.

**MICRON TECHNOLOGY, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1297

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
01000.

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**NORTH STAR INNOVATIONS, INC.,**  
*Appellant*

v.

**MICRON TECHNOLOGY, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1298, -1299

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
01004 and IPR2018-01005.

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**ON MOTION**

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Before PROST, *Chief Judge*, NEWMAN and HUGHES, *Circuit Judges*.

NEWMAN, *Circuit Judge*.

**O R D E R**

North Star Innovations, Inc. moves to vacate the Patent Trial and Appeal Board's decisions and remand for new hearings in light of this court's recent decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Micron Technology, Inc. opposes the motions. The Director of the United States Patent and Trademark Office ("PTO") opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motions to vacate and remand are granted. The Patent Trial and Appeal Board's decisions are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

March 30, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**POLARIS INNOVATIONS LIMITED,**  
*Appellant*

v.

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1483

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
01500.

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**ORDER**

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PER CURIAM.

In light of this court's decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), and the fact that Polaris Innovations Limited has raised an Appointments Clause challenge in its opening brief,

IT IS ORDERED THAT:

(1) The oral argument scheduled for May 5, 2020, is cancelled and the case is removed from the calendar.

(2) The Patent Trial and Appeal Board's decision in No. IPR2017-01500 is vacated and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

FOR THE COURT

April 9, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**NEXT CALLER, INC.,**  
*Appellant*

v.

**TRUSTID, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1291

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
01066.

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**ON MOTION**

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Before LOURIE, DYK, and REYNA, *Circuit Judges*.  
DYK, *Circuit Judge*.

**O R D E R**

Next Caller, Inc. moves to vacate the Patent Trial and Appeal Board's decision and remand for a new hearing in light of this court's recent decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). TRUSTID, Inc. opposes the motion. The Director of the United States Patent and Trademark Office opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

April 16, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**HORIZON PHARMA USA, INC., NUVO  
PHARMACEUTICALS (IRELAND) DESIGNATED  
ACTIVITY COMPANY,**  
*Appellants*

v.

**DR. REDDY'S LABORATORIES, INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1164

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00272.

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**ON MOTION**

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Before LOURIE, DYK, and REYNA, *Circuit Judges*.  
DYK, *Circuit Judge*.

**O R D E R**

The appellants move to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Dr. Reddy's Laboratories, Inc. opposes the motion. The Director of the United States Patent and Trademark Office intervenes and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

April 17, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**ROVI GUIDES, INC.,**  
*Appellant*

v.

**COMCAST CABLE COMMUNICATIONS, LLC,**  
*Appellee*

**UNITED STATES,**  
*Intervenor*

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2019-1215, 2019-1216, 2019-1218

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2017-00950, IPR2017-00951, IPR2017-00952.

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**ROVI GUIDES, INC.,**  
*Appellant*

v.

**COMCAST CABLE COMMUNICATIONS, LLC,**  
*Appellee*

**UNITED STATES,**  
*Intervenor*

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2019-1293, 2019-1294, 2019-1295

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2017-01048, IPR2017-01049, IPR2017-01050.

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PER CURIAM.

**O R D E R**

In light of this court's decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 132 (Fed. Cir. 2019), *reh'g denied* 953, F.3d 760 (Fed. Cir. 2020) and the fact that Rovi Guides, Inc. has raised an Appointments Clause challenge in its opening brief in these cases,

IT IS ORDERED THAT:

- (1) The stay ordered on January 2, 2020, is lifted.
- (2) The Patent Trial and Appeal Board's decisions in Nos. IPR2017-00950, IPR2017-00951, IPR2017-00952 and Nos. IPR2017-01048, IPR2017-01049, IPR2017-01050 are vacated and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

FOR THE COURT

April 22, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DALI WIRELESS INC.,**  
*Appellant*

v.

**COMMSCOPE TECHNOLOGIES LLC,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1045

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00571.

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Before LOURIE, DYK, and REYNA, *Circuit Judges*.

DYK, *Circuit Judge*.

**O R D E R**

Dali Wireless Inc. asks this court to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). CommScope

Technologies LLC does not oppose the request to remand. The Director of the United States Patent and Trademark Office intervenes and opposes vacatur and remand.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The Director is added as intervenor. The revised official caption is reflected above.
- (2) The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.
- (3) Each side shall bear its own costs.

FOR THE COURT

April 29, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**INTEX RECREATION CORP.,**  
*Appellant*

**BESTWAY (USA), INC.,**  
*Appellee*

v.

**TEAM WORLDWIDE CORPORATION,**  
*Cross-Appellant*

v.

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1141, -1142, -1143, -1149, -1150, -1151

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00870, IPR2018-00871, IPR2018-00872, IPR2018-00873,  
and IPR2018-00874.

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**ON MOTION**

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Before LOURIE, DYK, and REYNA, *Circuit Judges*.

DYK, *Circuit Judge*.

**O R D E R**

Team Worldwide Corporation moves to vacate the decisions of the Patent Trial and Appeal Board and remand for additional proceedings consistent with *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Intex Recreation Corp. and Bestway (USA), Inc. respond that any remand order should apply to all the underlying Board decisions. The Director of the United States Patent and Trademark Office intervenes and also opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) The motion is granted to the extent that the Patent Trial and Appeal Board's decisions in IPR2018-00870, IPR2018-00871, IPR2018-00872, IPR2018-00873, and IPR2018-00874 are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) Each side shall bear its own costs.

FOR THE COURT

April 29, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**TEAM WORLDWIDE CORPORATION,**  
*Appellant*

v.

**INTEX RECREATION CORP., BESTWAY (USA),  
INC.,**  
*Appellees*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1147

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00875.

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**ON MOTION**

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Before LOURIE, DYK, and REYNA, *Circuit Judges*.  
DYK, *Circuit Judge*.

**O R D E R**

Team Worldwide Corporation moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Intex Recreation Corp., Bestway (USA), Inc., and the Director of the United States Patent and Trademark Office oppose the motion.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

April 29, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**GREE, INC.,**  
*Appellant*

v.

**SUPERCELL OY,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1069, -1162

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. PGR2018-00029 and PGR2018-00047.

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Before O'MALLEY, WALLACH, and STOLL, *Circuit Judges*.  
STOLL, *Circuit Judge*.

**O R D E R**

GREE, Inc. asks this court to vacate the decisions of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Supercell Oy does not

oppose the request to remand. The Director of the United States Patent and Trademark Office opposes vacatur and remand.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The Patent Trial and Appeal Board's decisions are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.
- (2) Each side shall bear its own costs.

FOR THE COURT

May 19, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

s35

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**KONINKLIJKE KPN N.V.,**  
*Appellant*

v.

**LG ELECTRONICS, INC., HTC AMERICA, INC.,  
LENOVO (UNITED STATES) INC.,**  
*Appellees*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-2447

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00558, IPR2018-01639, and IPR2018-01645.

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**ON MOTION**

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Before O'MALLEY, WALLACH, and STOLL, *Circuit Judges*.  
STOLL, *Circuit Judge*.

**O R D E R**

Koninklijke KPN N.V. (KPN) moves to remand this case in light of this court’s decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). KPN states that LG Electronics, Inc., HTC America, Inc., and Lenovo (United States) Inc. “do not oppose a remand to the [Patent Trial and Appeal Board] for the limited purpose of complying with *Arthrex*.” The Director of the United States Patent and Trademark Office opposes the motion.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion is granted to the extent that the Patent Trial and Appeal Board’s decision is vacated, and the case is remanded to the Board for proceedings consistent with this court’s decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

May 20, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court



NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PERSONALIZED MEDIA COMMUNICATIONS, LLC,**  
*Appellant*

v.

**APPLE INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1197

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2016-  
00754.

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**PERSONALIZED MEDIA COMMUNICATIONS, LLC,**  
*Appellant*

v.

**APPLE INC.,**  
*Appellee*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2020-1198

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2016-  
01520.

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**ON MOTION**

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Before O'MALLEY, WALLACH, and STOLL, *Circuit Judges*.  
STOLL, *Circuit Judge*.

**O R D E R**

In each of the above-captioned appeals, Personalized Media Communications, LLC moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), and consistent with *Personalized Media Communications, LLC v. Apple Inc.*, 952 F.3d 1336 (Fed. Cir. 2020). Apple Inc. responds. The Director of the United States Patent and Trademark Office intervenes to address Personalized Media's requested relief under *Arthrex* and opposes.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor in these appeals. The revised official captions are reflected above.

(2) The motions to vacate and remand are granted to the extent that the Patent Trial and Appeal Board's decisions are vacated, and the cases are remanded to the Board for proceedings consistent with this court's decision in *Arthrex*. On remand, the Board may also consider this court's decision in *Personalized Media*.

(3) Each side shall bear its own costs.

FOR THE COURT

May 21, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

s25

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**In re: JHO INTELLECTUAL PROPERTY  
HOLDINGS, LLC,**  
*Appellant*

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2019-2330

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 90/013,933.

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**ON MOTION**

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Before O'MALLEY, WALLACH, and STOLL, *Circuit Judges*.  
STOLL, *Circuit Judge*.

**O R D E R**

JHO Intellectual Property Holdings, LLC moves to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). The Director of the United States Patent and Trademark Office opposes.

In *VirnetX Inc. v. Cisco Systems, Inc.*, No. 2019-1671, 2020 WL 2462797 (Fed. Cir. May 13, 2020), we determined that *Arthrex* applied in the context of *inter partes* reexaminations. Although this appeal arises out of an *ex parte*

reexamination, we see no relevant distinction between the proceedings such that the reasoning in *VirnetX* should not apply here. We therefore grant JHO's motion.

Accordingly,

IT IS ORDERED THAT:

(1) JHO's motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

June 18, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

s35

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**SIGNATURE SYSTEMS, LLC,**  
*Appellant*

v.

**AMERICAN EXPRESS COMPANY, AMERICAN  
EXPRESS TRAVEL RELATED SERVICES  
COMPANY, INC.,**  
*Appellees*

**ANDREI IANCU, Under Secretary of Commerce for  
Intellectual Property and Director of the United  
States Patent and Trademark Office,**  
*Intervenor*

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2020-1319

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. CBM2018-  
00035.

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**ON MOTION**

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Before WALLACH, TARANTO, and STOLL, *Circuit Judges*.  
STOLL, *Circuit Judge*.

## O R D E R

Appellant Signature Systems, LLC moves the court to vacate the decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). American Express Company and American Express Travel Related Services Company, Inc. (collectively, “American Express”) oppose and move for a declaration that Signature Systems has forfeited its Appointments Clause challenge. The Director of the United States Patent and Trademark Office intervenes and opposes vacatur and remand.

In opposing the motion on the ground that Signature Systems forfeited its Appointments Clause challenge by filing a motion to amend during covered business method patent review, American Express relies on *Ciena Corp. v. Oyster Optics, LLC*, 958 F.3d 1157 (Fed. Cir. 2020). In that case, after it received an unfavorable Board decision, the party that had petitioned the Patent Office to institute proceedings attempted to argue on appeal that the Board judges were unconstitutionally appointed. This court held that the petitioner could not raise its constitutional challenge on appeal because it had initiated the very proceedings it was now seeking to challenge and “was content to have the assigned Board judges adjudicate its invalidity challenges until the Board ruled against it.” *Id.* at \*1. In this case, by contrast, Signature Systems did not initiate the review proceedings. This case, unlike *Ciena*, thus does not involve the same clear basis for finding a forfeiture occurred.

Accordingly,

IT IS ORDERED THAT:

- (1) The Director is added as intervenor. The revised official caption is reflected above.
- (2) Signature Systems’ motion is granted. The Patent Trial and Appeal Board’s decision is vacated, and the case

is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) American Express's motion is denied.

(4) Each side shall bear its own costs.

FOR THE COURT

June 22, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

s29



**United States Court of Appeals  
for the Federal Circuit**

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**IN RE: BOLORO GLOBAL LIMITED,**  
*Appellant*

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2019-2349, -2351, -2353

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. 14/222,613, 14/222,615, and 14/222,616.

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**ON MOTION**

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MICHAEL RAYMOND CASEY, Oblon, McClelland, Maier and Neustadt, LLP, Alexandria, VA, for appellant. Also represented by JAMES LOVE; CARLOS RAFAEL VILLAMAR, The Villamar Firm PLLC, Falls Church, VA.

ROBERT J. MCMANUS, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA, for appellee Andrei Iancu. Also represented by THOMAS W. KRAUSE, FARHEENA YASMEEN RASHEED, MOLLY R. SILFEN, NICHOLAS THEODORE MATICH, IV, DANIEL KAZHDAN; COURTNEY DIXON, SCOTT R. MCINTOSH, MELISSA N. PATTERSON, JOSEPH H. HUNT, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC.

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Before LOURIE, DYK, and REYNA, *Circuit Judges*.

DYK, *Circuit Judge*.

## O R D E R

Boloro Global Limited moves to vacate and remand the underlying decisions of the Patent Trial and Appeal Board in these appeals from the Board's decisions in *ex parte* appeals, affirming the examiner's rejection of claims in Boloro's patent applications. The Director of the United States Patent and Trademark Office opposes the motion. Both parties have filed supplemental briefing in support of their respective positions.

The Director acknowledges that, under the reasoning of this court's decisions in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), and *VirnetX Inc. v. Cisco Sys., Inc.*, No. 2019-1671, 2020 WL 2462797 (Fed. Cir. May 13, 2020), the administrative patent judges (APJs) were not constitutionally appointed at the time the Board's final decision on appeal was issued. *See* Director's 2d Suppl. Resp. at 3–4 (conceding that it follows under the reasoning of the Supreme Court's decision in *Freytag v. Comm'r*, 501 U.S. 868, 882 (1991), as understood in *VirnetX*, that "APJs were principal officers for purposes of all governmental functions of their office"); *see also id.* at 4 (conceding that, even if the Director could refuse to issue a patent if the Board approves an application, that would not render an APJ an inferior officer).

In both *Arthrex* and *VirnetX*, this court held that the appropriate remedy for such a constitutional violation was to vacate the Board's decision and to remand for the purpose of reassigning the matter to a different panel of APJs for a new hearing and decision. *Arthrex*, 941 F.3d at 1338–39; *VirnetX Inc. v. Cisco Sys., Inc.*, No. 2019-1671, slip op. at 2 (Fed. Cir. Jan. 24, 2020). The Director urges that the same remedy should not be extended to *ex parte* proceedings because, according to the Director, he possesses

“complete control over the initial examination” and could at any time prior to the Board proceedings have directed the issuance of Boloro’s patents but did not, consistent with the Board’s subsequent decisions. But the Director having conceded that the APJ’s appointments were unconstitutional, we see no principled reason to depart here from the resulting remedy applied in *Arthrex* and *VirnetX*.

Accordingly,

IT IS ORDERED THAT:

(1) Boloro’s motion to vacate and remand is granted. The Patent Trial and Appeal Board’s decision is vacated, and the case is remanded to the Board for proceedings consistent with this court’s decision in *Arthrex*.

(2) Each side shall bear its own costs.

FOR THE COURT

July 7, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**IMAGE PROCESSING TECHNOLOGIES LLC,**  
*Appellant*

v.

**SAMSUNG ELECTRONICS CO., LTD., SAMSUNG  
ELECTRONICS AMERICA, INC.,**  
*Appellees*

**UNITED STATES,**  
*Intervenor*

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2018-2156

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
00353.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellees Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. filed a petition for rehearing en banc. Intervenor United States separately filed a combined petition for panel rehearing and rehearing en banc. The petitions were first referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on March 2, 2020.

FOR THE COURT

February 24, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**IMAGE PROCESSING TECHNOLOGIES LLC,**  
*Appellant*

v.

**SAMSUNG ELECTRONICS CO., LTD., SAMSUNG  
ELECTRONICS AMERICA, INC.,**  
*Cross-Appellants*

**UNITED STATES,**  
*Intervenor*

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2019-1408, 2019-1485

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Appeals from the United States Patent and Trade-  
mark Office, Patent Trial and Appeal Board in No.  
IPR2017-01218.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Cross-Appellants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. filed a petition for rehearing en banc. Intervenor United States separately filed a combined petition for panel rehearing and rehearing en banc. The petitions were first referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on March 2, 2020.

FOR THE COURT

February 24, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**POLARIS INNOVATIONS LIMITED,**  
*Appellant*

v.

**KINGSTON TECHNOLOGY COMPANY, INC.,**  
*Appellee*

**UNITED STATES,**  
*Intervenor*

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2018-1768

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Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2016-01621.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**



Appellant Polaris Innovations Limited and Appellee Kingston Technology Company, Inc. separately filed petitions for rehearing en banc. Intervenor United States also filed a combined petition for panel rehearing and rehearing en banc. The petitions were first referred as petitions for rehearing to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 9, 2020.

FOR THE COURT

April 2, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**VILOX TECHNOLOGIES, LLC,**  
*Appellant*

v.

**UNIFIED PATENTS INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2057

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00044.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**ORDER**

Intervenor Andrei Iancu filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on April 14, 2020.

FOR THE COURT

April 7, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PFIZER INC.,**  
*Appellant*

v.

**MERCK SHARP & DOHME CORP., SANOFI  
PASTEUR INC., SK CHEMICALS CO., LTD.,**  
*Appellees*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1871, 2019-1873, 2019-1875, 2019-1876, 2019-2224

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2017-  
02131, IPR2017-02132, IPR2017-02136, IPR2017-02138,  
IPR2018-00187.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellees Sanofi Pasteur Inc. and SK Chemicals Co., Ltd., Appellee Merck Sharp & Dohme Corp., and Intervenor Andrei Iancu separately filed combined petitions for panel rehearing and rehearing en banc. The petitions were referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 15, 2020.

FOR THE COURT

April 8, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**ALAN STUART, TRUSTEE FOR THE CECIL G.  
STUART AND DONNA M. STUART REVOCABLE  
LIVING TRUST AGREEMENT, CDS  
DEVELOPMENT LLC,**  
*Appellants*

v.

**RPM INTERNATIONAL, INC., RUST-OLEUM  
CORPORATION,**  
*Cross-Appellants*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1994, 2019-2238

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
02158.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**ORDER**

Cross-Appellants RPM International, Inc. and Rust-Oleum Corporation and Intervenor Andrei Iancu separately filed combined petitions for panel rehearing and rehearing en banc. The petitions were referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 15, 2020.

FOR THE COURT

April 8, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**VAPORSTREAM, INC.,**  
*Appellant*

v.

**SNAP INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2231, 2019-2290, 2019-2337, 2020-1030

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Appeals from the United States Patent and Trade-  
mark Office, Patent Trial and Appeal Board in Nos.  
IPR2018-00200, IPR2018-00312, IPR2018-00369,  
IPR2018-00458.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellee Snap Inc. filed a petition for rehearing en banc. Intervenor Andrei Iancu separately filed a combined petition for panel rehearing and rehearing en banc. The petitions were referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 15, 2020.

FOR THE COURT

April 8, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**VAPORSTREAM, INC.,**  
*Appellant*

v.

**SNAP INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2339

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00404.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellee Snap Inc. filed a petition for rehearing en banc. Intervenor Andrei Iancu separately filed a combined petition for panel rehearing and rehearing en banc. The petitions were referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 15, 2020.

FOR THE COURT

April 8, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**CONCERT PHARMACEUTICALS, INC.,**  
*Appellant*

v.

**INCYTE CORPORATION,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2011

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
01256.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
and HUGHES, *Circuit Judges*\*.

PER CURIAM.

**O R D E R**

Appellee Incyte Corporation and Intervenor Andrei Iancu separately filed combined petitions for panel rehearing and rehearing en banc. The petitions were referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 16, 2020.

FOR THE COURT

April 9, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

\* Circuit Judge Stoll did not participate.

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**AGROFRESH, INC.,**  
*Appellant*

v.

**UPL LIMITED,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2243

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
01919.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, REYNA, WALLACH, TARANTO, CHEN, and HUGHES,  
*Circuit Judges*\*.

PER CURIAM.

**O R D E R**

Intervenor Andrei Iancu filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on April 16, 2020.

FOR THE COURT

April 9, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

\* Circuit Judges O'Malley and Stoll did not participate.

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DOCUMENT SECURITY SYSTEMS, INC.,**  
*Appellant*

v.

**SEOUL SEMICONDUCTOR CO., LTD., SEOUL  
SEMICONDUCTOR, INC., CREE, INC.,**  
*Appellees*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2281

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00333, IPR2018-01205.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
O'MALLEY, REYNA, WALLACH, TARANTO, CHEN, HUGHES,  
and STOLL, *Circuit Judges*\*.

PER CURIAM.

**O R D E R**

Intervenor Andrei Iancu filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on April 16, 2020.

FOR THE COURT

April 9, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

\* Circuit Judge Moore did not participate.

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**POLARIS INNOVATIONS LIMITED,**  
*Appellant*

v.

**KINGSTON TECHNOLOGY COMPANY, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1202

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2016-  
01622.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, MAYER\*, LOURIE,  
DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO,  
CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellant Polaris Innovations Limited and Appellee Kingston Technology Company, Inc. separately filed petitions for rehearing en banc. Intervenor Andrei Iancu also filed a combined petition for panel rehearing and rehearing en banc. The petitions were referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 21, 2020.

FOR THE COURT

April 14, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

\* Circuit Judge Mayer participated only in the decision on the petition for panel rehearing.

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DOCUMENT SECURITY SYSTEMS, INC.,**  
*Appellant*

v.

**SEOUL SEMICONDUCTOR CO., LTD., SEOUL  
SEMICONDUCTOR, INC.,**  
*Appellees*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2430

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00522.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

---

Before PROST, *Chief Judge*, NEWMAN, LOURIE, BRYSON\*,  
DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO,  
CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Intervenor Andrei Iancu filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on April 27, 2020.

FOR THE COURT

April 20, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

\* Circuit Judge Bryson participated only in the decision on the petition for panel rehearing.

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**SOUND VIEW INNOVATIONS, LLC,**  
*Appellant*

v.

**UNIFIED PATENTS, LLC,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2020-1154

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00599.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

---

Before PROST, *Chief Judge*, NEWMAN, LOURIE, BRYSON\*,  
DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO,  
CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Intervenor Andrei Iancu filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on April 27, 2020.

FOR THE COURT

April 20, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

\* Circuit Judge Bryson participated only in the decision on the petition for panel rehearing.

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**SOUND VIEW INNOVATIONS, LLC,**  
*Appellant*

v.

**HULU, LLC,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2020-1155

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
00864.

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**ON PETITIONS FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, BRYSON\*,  
DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO,  
CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellee Hulu, LLC and Intervenor Andrei Iancu separately filed combined petitions for panel rehearing and rehearing en banc. The petitions were referred to the panel that heard the appeal, and thereafter the petitions for rehearing en banc were referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

The petitions for rehearing en banc are denied.

The mandate of the court will issue on April 28, 2020.

FOR THE COURT

April 21, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

\* Circuit Judge Bryson participated only in the decision on the petition for panel rehearing.

**United States Court of Appeals  
for the Federal Circuit**

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**VIRNETX INC.,**  
*Appellant*

v.

**CISCO SYSTEMS, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1671

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 95/001,679.

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**ON PETITIONS FOR PANEL REHEARING**

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NAVEEN MODI, Paul Hastings LLP, Washington, DC,  
for appellant. Also represented by STEPHEN BLAKE  
KINNAIRD, JOSEPH PALYS, IGOR VICTOR TIMOFEYEV,  
MICHAEL WOLFE, DANIEL ZEILBERGER.

DAVID L. MCCOMBS, Haynes & Boone, LLP, Dallas, TX,  
filed a combined petition for panel rehearing and rehearing

en banc for appellee. Also represented by THEODORE M. FOSTER, DEBRA JANECE MCCOMAS.

MELISSA N. PATTERSON, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, filed a combined petition for panel rehearing and rehearing en banc for intervenor. Also represented by COURTNEY DIXON, SCOTT R. MCINTOSH; THOMAS W. KRAUSE, JOSEPH MATAL, BRIAN RACILLA, FARHEENA YASMEEN RASHEED, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA.

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Before MOORE, O'MALLEY, and CHEN, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

### **O R D E R**

The Director of the United States Patent and Trademark Office and Cisco Systems, Inc. have petitioned for rehearing to argue that we erred in extending *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019) beyond the context of inter partes reviews to this appeal from a decision of the Patent Trial and Appeal Board in an inter partes reexamination. Specifically, they assert that administrative patent judges (“APJs”) should be deemed constitutionally appointed officers at least when it comes to their duties reviewing appeals of inter partes reexaminations. We issue this order for the purpose of more fully explaining our rationale for rejecting this argument.

In *Freytag v. Commissioner*, 501 U.S. 868 (1991), the Supreme Court addressed a similar contention. That case dealt with an assignment of a special trial judge by the Chief Judge of the United States Tax Court to a case in which the special trial judge was authorized to prepare proposed findings for a judge of the Tax Court. While conceding that special trial judges were inferior officers when assigned under the same governing statute to other

proceedings in which the trial judge was authorized to render the final decision, the Commissioner of the Internal Revenue Service argued that the special trial judge was acting as an employee in cases when he merely proposes findings. The Court rejected the Commissioner's argument, finding that the special trial judges were "not inferior officers for purposes of some of their duties under" the statute "but mere employees with respect to other responsibilities." *Id.* at 882. The Court explained that "[t]he fact that an inferior officer on occasion performs duties that may be performed by an employee not subject to the Appointments Clause does not transform his status under the Constitution." *Id.* Instead, "[i]f a special trial judge is an inferior officer for purposes of" some responsibilities, then "he is an inferior officer within the meaning of the Appointments Clause and he must be properly appointed." *Id.*

*Freytag* indicates that we should "look not only to the authority exercised in [an appellant]'s case but to all of that appointee's duties" when assessing an Appointments Clause challenge. *Lucia v. SEC*, 832 F.3d 277, 284 (D.C. Cir. 2016), *rev'd on other grounds*, 138 S. Ct. 2044 (2018); *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 684 F.3d 1332, 1338 (D.C. Cir. 2012) ("Even though the [Copyright Royalty Judges] affect Intercollegiate only in regard to webcasting, *Freytag* calls on us to consider all the powers of the officials in question in evaluating whether their authority is 'significant,' not just those applied to the litigant bringing the challenge."). The Director acknowledges that once appointed to the Board, the APJs' duties include both conducting inter partes reviews and reviewing appeals of inter partes reexaminations. Director's Pet. at 3 ("In addition to conducting inter partes *review* (IPR) proceedings, the Board hears appeals from inter partes *reexaminations*[.]"). Thus, if these APJs are unconstitutionally appointed principal officers because of their inter partes review duties in light of *Arthrex*, it would appear that under *Freytag* vacatur would be appropriate for all agency actions

rendered by those APJs regardless of the specific type of review proceeding on appeal. *Freytag*, 501 U.S. at 882; *Collins v. Mnuchin*, 938 F.3d 553, 591 (5th Cir. 2019) (“If by statute he performed at least some duties of an Officer of the United States, his appointment must accord with Article II.” (citation omitted)); *id.* at 593 (noting that an agency action by an unconstitutionally appointed official is voidable whenever the officer is vested with “authority that was never properly theirs to exercise”).

While it seems that, on this point, *Freytag* sweeps broadly and would apply to all Board proceedings, we need not go so far. The Director and Cisco have provided no basis to disturb our prior determination that the relevant analysis requires similar treatment of appeals from these post-grant proceedings. Although no discovery is held and no trial conducted in inter partes reexaminations, the nature of the two proceedings are otherwise similar. Both involve third-party challenges to the claims of an issued patent and, importantly, in both, APJs exercise significant authority on behalf of the government by issuing final decisions that decide the patentability of the challenged claims. The Director’s authority over the Board’s decisions is not meaningfully greater in the context of inter partes reexaminations than in inter partes reviews, moreover, because, by statute, only the Board may grant rehearing in reexaminations, Pre-AIA 35 U.S.C. § 6(b),<sup>1</sup> and only a party to the inter partes reexamination, not the Director, has the power to appeal the decision to this court, Pre-AIA 35 U.S.C. § 141. Thus, as is the case in inter partes reviews, “[i]f no party appeals the APJs’ decision, the Director’s

<sup>1</sup> When it enacted the Leahy-Smith America Invents Act, Congress made clear that provisions of sections 6, 134, and 141 of title 35 that were in existence before enactment would still govern inter partes reexamination proceedings. AIA § 7(e)(2).

hands are tied.” *Arthrex*, 941 F.3d at 1329; Pre-AIA 35 U.S.C. § 316(a) (stating that the Director “shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable”).<sup>2</sup>

The Director’s and Cisco’s arguments to the contrary are unpersuasive. They primarily argue that the Director has significant control over inter partes reexamination proceedings *before* a case reaches the Board. In this regard, Cisco contends that—acting through the examiners—the Director can control the findings of fact and conclusions of law that are present in the reexamination at the start of the appeal process. Cisco’s Pet. at 5–6. The Director adds that he “acting alone has authority to make a decision favorable to a patent owner” before a case ever gets to the Board for review. Director’s Pet. at 10. That cited authority offers “no actual reviewability of a decision issued by a panel of APJs.” *Arthrex*, 941 F.3d at 1329. As this court explained in *Arthrex*, “[t]he relevant question is to what extent th[e] final written] decisions are subject to the Director’s review.” *Id.* at 1330. And, like the Director’s ability to decide whether to institute inter partes review proceedings, the Director’s cited powers here provide no form of review authority or supervision over the APJs’ final decisions. *Id.*

We also reject Cisco’s argument that “[i]n stark contrast to *inter partes* reviews, *inter partes* reexamination appeals allow for the Director’s direct involvement [in Board

<sup>2</sup> Additionally, the same appointment and removal statutory provisions govern all APJs. Before curing the defect, we explained in *Arthrex* that “[u]nder the current Title 35 framework, both the Secretary of Commerce and the Director lack unfettered removal authority.” 941 F.3d at 1332. Neither the Director nor Cisco contend that a different conclusion is warranted with respect to reexaminations.

proceedings] through a petition process.” Cisco’s Pet. at. 6. The regulations cited only allow a party to petition the Director in an action “which is not subject to appeal to the Patent Trial and Appeal Board or to the court.” 37 C.F.R. § 1.181(a)(1). Those “petitions involving action of the Patent Trial and Appeal Board” must instead be “addressed to the Chief Administrative Patent Judge.” 37 C.F.R. § 41.3(a); 37 C.F.R. § 1.181(a)(3) (“petitions involving actions of the Patent Trial and Appeal Board” must be addressed pursuant to § 41.3(a)). Cisco is left to argue that, under 37 C.F.R. § 1.183, the Director can in extraordinary circumstances sua sponte waive requirements of the regulations that are not required by the statutes. But even then, Cisco provides no mechanism by which the Director could, on his own, review the APJs’ decision.

Cisco’s remaining arguments are also unconvincing. Cisco contends that the Director has the authority to promulgate regulations governing the conduct of inter partes reexamination appeals; has the power to provide policy directives and management supervision of the Office; has the authority to designate Board opinions as precedential; has the authority to decide whether to institute an inter partes reexamination in the first place; and controls the selection of judges to hear each inter partes reexamination appeal. Cisco’s Pet. at. 4–5. *Arthrex* recognized this same oversight authority in the context of inter partes reviews, 941 F.3d at 1331–32, but concluded that “control and supervision of the APJs is not sufficient to render them inferior officers,” given “the lack of any presidentially-appointed officer who can review, vacate, or correct decisions by the APJs combined with” the Director’s “limited removal power” over APJs, *id.* at 1335. That precedent compels that we reach the same conclusion in the context of inter partes reexaminations.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for panel rehearing are denied.

May 13, 2020

Date



**United States Court of Appeals  
for the Federal Circuit**

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**VIRNETX INC.,**  
*Appellant*

v.

**CISCO SYSTEMS, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-1671

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 95/001,679.

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**ON PETITIONS FOR EN BANC REHEARING**

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NAVEEN MODI, Paul Hastings LLP, Washington, DC,  
for appellant. Also represented by STEPHEN BLAKE  
KINNAIRD, JOSEPH PALYS, IGOR VICTOR TIMOFEYEV,  
MICHAEL WOLFE, DANIEL ZEILBERGER.

DAVID L. MCCOMBS, Haynes & Boone, LLP, Dallas, TX,  
filed a combined petition for panel rehearing and rehearing

en banc for appellee. Also represented by THEODORE M. FOSTER, DEBRA JANECE MCCOMAS.

MELISSA N. PATTERSON, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, filed a combined petition for panel rehearing and rehearing en banc for intervenor. Also represented by COURTNEY DIXON, SCOTT R. MCINTOSH; THOMAS W. KRAUSE, JOSEPH MATAL, BRIAN RACILLA, FARHEENA YASMEEN RASHEED, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA.

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN, and HUGHES, *Circuit Judges*.\*

PER CURIAM.

## ORDER

Combined petitions for panel rehearing and rehearing en banc were separately filed by the Director of the United States Patent and Trademark Office and Cisco Systems, Inc. The petitions were first referred to the panel that heard the appeal and were denied by the panel by separate order. The petitions for rehearing en banc were referred to the circuit judges who are in regular active service. A poll was requested, taken, and failed.

Upon consideration thereof,

IT IS ORDERED THAT:

The petitions for rehearing en banc are denied.

\* Circuit Judge Stoll did not participate.

The mandate of the court will issue on May 20, 2020.

FOR THE COURT

May 13, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**EUGENE H. LUOMA,**  
*Appellant*

v.

**GT WATER PRODUCTS, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2315

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 95/001,754.

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**ON PETITION FOR PANEL REHEARING**

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Before MOORE, O'MALLEY, and STOLL, *Circuit Judges*.  
PER CURIAM.

**ORDER**

For the same reasons that panel rehearing was denied in *VirnetX, Inc. v. Cisco Sys., Inc.*, No. 2019-1671 (Fed. Cir. May 13, 2020),

IT IS ORDERED THAT:

The Director of the United States Patent and Trademark Office's petition for panel rehearing is denied.

FOR THE COURT

May 15, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**EUGENE H. LUOMA,**  
*Appellant*

v.

**GT WATER PRODUCTS, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2019-2315

---

Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 95/001,754.

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**ON PETITION FOR REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**ORDER**

The Director of the United States Patent and Trademark Office filed a combined petition for panel rehearing and rehearing en banc. The petition was first referred to the panel that heard the appeal and was denied by separate order. The petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for rehearing en banc is denied.

The mandate of the court will issue on May 22, 2020.

FOR THE COURT

May 15, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**NORTH STAR INNOVATIONS, INC.,**  
*Appellant*

v.

**MICRON TECHNOLOGY, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2020-1295, 2020-1296

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in Nos. IPR2018-  
00998, IPR2018-00999.

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**ON PETITION FOR REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.



PER CURIAM.

**O R D E R**

Appellee Micron Technology, Inc. filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on June 23, 2020.

FOR THE COURT

June 16, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**NORTH STAR INNOVATIONS, INC.,**  
*Appellant*

v.

**MICRON TECHNOLOGY, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2020-1297

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2018-  
01000.

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**ON PETITION FOR REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellee Micron Technology, Inc. filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on June 23, 2020.

FOR THE COURT

June 16, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**NORTH STAR INNOVATIONS, INC.,**  
*Appellant*

v.

**MICRON TECHNOLOGY, INC.,**  
*Appellee*

**ANDREI IANCU, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE,**  
*Intervenor*

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2020-1298, 2020-1299

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Appeals from the United States Patent and Trade-  
mark Office, Patent Trial and Appeal Board in Nos.  
IPR2018-01004, IPR2018-01005.

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**ON PETITION FOR REHEARING EN BANC**

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Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,  
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,  
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

**O R D E R**

Appellee Micron Technology, Inc. filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on June 23, 2020.

FOR THE COURT

June 16, 2020  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court