20-8464
No.

In the Supreme Court of the United States

ALBERTO SOLAR & WHO, *Petitioners*

v

THE COCA-COLA COMPANY, *Respondent*

&

UNITED STATES, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI
BEFORE JUDGMENT

/ASUS/
ALBERTO SOLAR-SOMOHANO/
Petitioner
736 SE 8th Place
Miami, Fl. 33101
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Whether *Arthrex* a hoax does not control be foreclosed from deciding appointment clause problem instead is *Field v. Clark* 143 US 649 (1892) that controls for the cause of it all was the *enrolled bill* of 2002 Property High Technology Technical Amendments Act was not the **engrossed** bill passed by both houses.

Whether *Field v. Clark* 143 US 649 (1892) can no-longer stand if the enrolled bill is not the engrossed bill that was passed by both houses.

Whether this Court w/o jurisdiction to even issue any remedy at all for only belonging to Congress to fix for the law that was passed by Congress was not the law signed enacted by the President.

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PARTIES TO THE PROCEEDINGS BELOW

The Petitioner is the Appellant in the Federal Circuit pending cases 19-2414 & 20-1245 20-1406

The Respondents in this Court is Appellee the Coca-Cola Company and the United States which intervened in the Court of Appeals in all 3 cases.

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RELATED PROCEEDINGS

The following proceedings indirectly relates to this case within the meaning of Rule 14.1(b)(iii); *United States v. Arthrex, Inc.*, 19-1434; 19-1452; 19-1458 *(cert. granted Oct. 13. 2020)*

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On April 27th, 2021, the Federal Court of Appeals stayed the case until this Court's resolution of US v. Arthrex 19-1434 (App, (A infra, 1a)

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The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 28 U.S.C. 2101I and Supremem Court Rule 11

CONSTITUTIONAL PROVISIONS INVOLVED

Vesting Clause

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Art. I, § 1,

Presentment Clause

Before a bill passed by both houses of Congress can become law, it must be "presented to the President of the United States. Art. I, § 7 cl. 2, 3

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The president must take care that the law be faithfully executed. Art. 2, § 3

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Section 106 of Title I

Every bill or joint resolution in each House of Congress shall, when such bill or resolution passes either House, be printed, and such printed copy shall be called the engrossed bill or resolution as the case may be. Said engrossed bill or resolution shall be signed by the Clerk of the House or the Secretary of the Senate, and shall be sent to the other House, and in that form shall be dealt with by that House and its officers, and, if passed, returned signed by said Clerk or Secretary.

When such bill, or joint resolution shall have passed both Houses, it shall be printed and shall then be called the enrolled bill, or joint resolution, as the case may be, and shall be signed by the presiding officers of both Houses and sent to the President of the United States.

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When bills are enrolled they shall be examined by a joint committee for that purpose, who shall carefully compare the enrollment with the engrossed bills as passed in the two Houses, and, correcting any errors that may be discovered in the enrolled bills, make their report forthwith to their respective Houses. [1]

Enrolled Bill Rule

The principle of judicial interpretation of rules of procedure in legislative bodies. Under the doctrine, once a bill passes a legislative body and is signed into law, the courts assume that all rules of procedure in the enactment process were properly followed. That is, "if a legislative document is authenticated in regular form by the appropriate officials, the court treats that document as properly adopted. [2]

Engrossed Bill Rule

Engrossed in the House is the official copy of the bill or joint resolution as passed, including the text as amended by floor action and certified by the Clerk of the House before

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1st Cong., 1st sess., July 27, 1789, p. 67. The Joint Committee on Enrolled Bills was established on July 27, 1789, with the responsibility for the enrollment of engrossed bills. The enacting resolution states the following: In 1876 the joint rules of Congress were allowed to lapse, and although the committee continued to be referred to as a "joint committee," it consisted thereafter of a separate committee in each house, each supervising the enrolling of bills originated in its own house. Under the Reorganization Act of 1946 the functions of the Committee on Enrolled Bills were incorporated into those of the House Administration Committee. The Joint Committee on Enrolled Bills has since that date been composed of three members from the House Administration Committee and three members from the Senate Committee on Rules and Administration.

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Engrossed in the Senate is the official copy of the bill or joint resolution as passed, including the text as amended by floor action, and certified by the Secretary of the Senate before it is sent to the House. (ES) [4]

Members of Congress do not vote on legislation in the abstract; they vote on printed bills and the only Senate bill on which the House can vote is an engrossed Senate bill.

Indeed, the point of engross-ment is to print the text of a bill so that it can be sent from one chamber to the other and "in that form. . . dealt with" by the house that receives it.

Ominous Bill

Is a proposed law that covers a number of diverse or unrelated topics.

A bill with numerous other bills together with several measures into one or combines diverse subjects that is accepted by a single vote.

Because of their large size and scope, omnibus bills limit opportunities for debate and scrutiny.

Historically, omnibus bills have sometimes been used to pass controversial amendments.

For this reason, some consider omnibus bills to be anti-democratic also known as Big Ugly.

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STATEMENT OF THE CASE

I. Preliminary Matters

A. **Writ before Judgment:**

Certiorari before judgment in a case pending in a court appeals will be granted "only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate practice and to require immediate settlement in this Court." For several reasons, the circumstances of this case make it appropriate for granting such early review. [5] This case is ripe to the greatest extent to be consider before judgement since the Court of Appeals has stay the judgment in the first place to consider the decision application of *Arthrex* on Trademark Judges when Arthrex does not control instead control by *Field v. Clark,* 143 US 649 (1892)

B. **Law of the Case:**

Since as early as 2013 through the years in (17) oppositions proceedings in the Trial Trademark Appeal Board (TTAB) Petitioner made the following constitutional challenge objection:

"„„*pursuant to Ryder v. U.S., 515 US 182 (2003); In re Alappat, 33 F.2d 1526 (Fed. Circuit 1994) en banc, interjecting Constitution objection to the present all related against all USPTO Appeal Board proceedings panel members consisting of quorum of Administrative Judges none appointees of the President as principle officers, thus, Titles 15, USC §1067(b) and 35, USC §3, are Unconstitutional*"

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This Court has found it appropriate to grant review before judgment when anothersimilar case has already been accepted for review. *Gratz v. Bollinger* 539 U.S. 244 (2003) & *United States v. Fanfan* 542 U.S. 956 (2004) also *Brown v. Board of Education,* 344 U.S. 1, 3 (1952), also, the Court took judicial notice of a similar case pending in the court of appeals and invited the filing of a petition for review in that case, *Bolling v. Sharpe,* 344 U.S. 873 (1952) and *Taylor v. McElroy,* 358 U.S. 918 (1958) (certiorari granted before judgment "because of the pendency here" of another case). **5th,** in cases the federal government sought cert. before judgment. *Mistretta v. United States* 488 US 361 (1989); *United States v Nixon* 418 US 685; (1974)

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C. **United States Consent:**

The United States gave consent to Petitioner filing of amicus brief in their pending stay writ of certiorari 20-74.

However, under this Court's rules a pro se is not allowed to file an amicus brief. Petitioner also requested consent from the United States for this present writ before judgment. The United States did not response.

On October 28/29th, 2020 all parties, *counsel for Arthrex and Smith-Nephew of US v. Arthrex 19-1434, and United States* gave consent for amicus curiae brief filing.

II. Proceedings Below

D. **Trial Trademark Appeal Board:**

Since as early as 2013 thru the years now 2020 in 17 proceedings with the same 3 Administrative Judges, Petitioner objected pursuant to *Ryder v. US*, 515 U.S. 177 (1995) declaring the panel members must be appointed by the president because always the same 3 panel members 17 times all 3 were all compromised as a matter of law is called panel stacking the fix was in.

E. **Court of Appeals:**

On February 5th, 2020, Petitioner declared the following Constitutional Challenge:

Whether, if the Patent Act of 2002 that was signed by the President was not the law that was passed by both houses, does the entire Act must be invalidated as void [6]

On Feb. 19th, 2020, the Court of Appeals certify the question as an Appointment issue when the question was the invalidation of an Act of Congress:

"Somohano also notices the court that he is challenging the Board's decision as rendered by a panel of administrative trademark judges who were appointed in violation of the Appointments Clause of the Constitution"

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III. Patent Appeal Board from 1770-1998

G. **Appointments by the President:**

Since the beginning of the Patent Office of 1790 [7] and throughout the years including decision from the Court of Appeals on the issue about who the members of the Patent Board of Appeals must consist of at least 2 principle officer appointed by the President [8] in which further the acts of

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Congress intentions [9] said so in fact [10] all the way till the year of 1982. [11] The **Act** of 1984 required that only one examiners-in-chief shall be a member of the Patent & Trademark AppealBoard with the Commissioner, the Deputy Commissioner, the Assistant Commissioners, who appointed by the president in which will be pay grade GS-16 under 5332 of Board with the Commissioner, the Deputy Commissioner, the Assistant Commissioners, who appointed by the president in which will be pay grade GS-16 under 5332 of title 5 renamed as Senior Executive Services pay grade of appointee of the president. [12]

In 1994, the Court of Appeals heard a political turmoil case of *Alappat*, 33 F.3d 1526 Fed. Cir. 1994), *en banc* in which the Commissioner of the USPTO fix the decision of billion dollar patent approval by redesignating the panel members on reconsideration. The Majority holding knowing about *Wiechert en banc* in 1967 avoided it. Saying: "We acknowledge the *considerable debate and concern among the patent bar We leave to the legislature to determine whether any restrictions should be placed on the Commissioner's authority this regard. Absent any congressional intent to impose such restrictions, we decline to do so sua sponte"*

9

The Patent Act of 1975 amended act of 1958 at *35 USC 3* providing not more than (15) examiners in chief as a member of the appeal board with 3 principle officers appointed by the president. 88 Stat. 1956.

10

The Patent Act of 1980 amended 15 USC 1067 (Act of 1958 (72 Stat. 540), and January 2,1975 (88 Stat. 1949) that the Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and "members" appointed by the Commissioner". A total of 4 not 3 panel members.94 Stat. 2024

11

The Act of 1982, Congress 35 USC 3 deleting the phrase "not more than fifteen"; and (2) inserting phrase "appointed under sec. 7 of title" immediately after the phrase "examiners in chief" 96 Stat. 319

12

98 Stat. 3386;98 Stat. 339

Congress intentions [9] said so in fact [10] all the way till the year of 1982. [11] The **Act** of 1984 required that only one examiners-in-chief shall be a member of the Patent & Trademark AppealBoard with the Commissioner, the Deputy Commissioner, the Assistant Commissioners, who appointed by the president in which will be pay grade GS-16 under 5332 of Board with the Commissioner, the Deputy Commissioner, the Assistant Commissioners, who appointed by the president in which will be pay grade GS-16 under 5332 of title 5 renamed as Senior Executive Services pay grade of appointee of the president. [12]

In 1994, the Court of Appeals heard a political turmoil case of *Alappat*, 33 F.3d 1526 Fed. Cir. 1994), *en banc* in which the Commissioner of the USPTO fix the decision of billion dollar patent approval by redesignating the panel members on reconsideration. The Majority holding knowing about *Wiechert en banc* in 1967 avoided it. Saying: "We acknowledge the *considerable debate and concern among the patent bar We leave to the legislature to determine whether any restrictions should be placed on the Commissioner's authority this regard. Absent any congressional intent to impose such restrictions, we decline to do so sua sponte"*

9

The Patent Act of 1975 amended act of 1958 at *35 USC 3* providing not more than (15) examiners in chief as a member of the appeal board with 3 principle officers appointed by the president. 88 Stat. 1956.

10

The Patent Act of 1980 amended 15 USC 1067 (Act of 1958 (72 Stat. 540), and January 2,1975 (88 Stat. 1949) that the Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and "members" appointed by the Commissioner". A total of 4 not 3 panel members.94 Stat. 2024

11

The Act of 1982, Congress 35 USC 3 deleting the phrase "not more than fifteen"; and (2) inserting phrase "appointed under sec. 7 of title" immediately after the phrase "examiners in chief" 96 Stat. 319

12

98 Stat. 3386;98 Stat. 339

H. **Appointments by the Secretary of Commerce:**

On account of the political turmoil of the Commissioner fixing the decision of the Patent Board by designated the members not being principle officers in which the Court of Appeals en banc in *Alappat* purposely passing on the constitutional disarray not doing the right thing, provoking Congress to act with legislature in 1999. [13]

However Congress had doubts with it by again provoking new legislation in the 2nd session overhauling the names of the officers with another President appointee Board member.

IV. Intellectual Technology Technical Amendments Act

I. **106th Congressional Session 1999-2000:**

On Sept. 19th, 2000, H.R. 4870 was passed by the house having **9 sections** in which Sec. 2 amends the officers renaming Director back to Commissioner and adding a new officer as Deputy Commissioner. Sec. 3 amends 35 USC 134 by striking administrative judges inserting "Primary examiners" and section 4 made the Deputy Commissioner also member of both the Patent and Trademark Appeal Board. H7762-H7765

On Sept. 20th, 2000 H.R. 4870 was received by the Senate.

J. **107th Congressional Session 2001-2002**:

First Session

On February 13th, 2001, H.R. 4870 was re-introduced as H.R. 615 adopted by Senate as bill SB320 adding 3 other sections a **total of 12 sections**. On February 14th, 2001 it was **engrossed** and passed by the Senate 98-0. S1381-1384.

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Renaming "Commissioner" as "Director" appointed by President having Secretary of Commerce appoint Commissioner of Patents (CoP) and Trademark (CoT) 113 Stat. 150A-572-577. and amending the Patent Appeal Board will consist of the "Director". "CoP" ; "CoT"and Administrative Judges (AJ) in which the Director appoints the AJ not the SoC. 113 Stat. 150A-580. Both the CoP and CoT pay grade of Senior Executive Service and bonus. 113 Stat. 150A-577.

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On November 15th, 2001, the House amended SB320 having the Deputy Commissioner be *appointed by the President* and adding another principle officer named Special Counsel for intellectual property policy. S11926

On November 16th, 2001, the Senate agreed engrossed the House amendment (SA2162). S1966-1169 [15]

2nd Session

On January 2nd, 2002, H.R. 2215 was engrossed by the Senate. [18] The bill did not contain neither SB320 nor SA2162 On January 23rd, 2002, HR 2215 was enrolled while having SB320/SA2162 inserted -printed however **Sec. 2** of SB 320 engrossed as SA2162 by both houses **went missing.**

On September 25th, 2002, SB320/SA2162 and other bills was inserted into Appropriation bill H.R. 2215 making it an ominous bill, thus from having (12) sections now having (11) sections. H. Rept. 107-685.

On Sept. 26, 2002, the House agreed to conference report and on Oct. 1, 3, Senate considered and agreed to conference report. Vol. 148

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On July 10th, 2001 Appropriation Bill H.R. 2215 was introduced, H. Rept. 107-125 which passed engrossed by the House on July 23rd, 2001 Vol. 147, having the following sections only: 101-102; 201-2008; 301-307 and 401-402.

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K. **Amendment of Title 35/1946 Act of 2008:**

Obviously since section 2 of the enrolled bill 320/2162 was eaten by the bugs missing appointment by President of "Deputy Commissioner" at section 4 having the Deputy Commissioner also as a panel member was inoperable especially when the officer was never renamed for the missing section 2 in the first place, thus provoking Congress to amend both 35 USC and 15 USC 1067 striking "Deputy Commissioner" as a member of the board and inserting that the "Secretary of Commerce" which will appoint the AJ. SB 3295 122 Stat. 3014 Public Law 110–313—Aug. 12, 2008 But, Congress forgot about section 3 of the 2002 Act also being inoperable at 35 USC 134 until 3 years later.[16]

L. **Leahy-Smith America Invent Act 2011**:

It took Congress 9 years to figure it out obviously not left it like is that in 2002 section 134 of Title 35 replaced Administrative Judges as "primary examiner". [17]

16

125 Stat. 290 Public Law 112–29—Sept 16, 2011

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H.R. Bill 7366, introduced in June, 2020, requests to replead the Leahy-Smith America Invents Act (Public Law 112–29) enacted on September 16, 2011, Because several decisions of the Supreme Court have harmed the progress of Science and the useful Arts by eroding the strength and value of the patent system. REPEAL OF FIRST-TO-FILE SYSTEM UNDER THE AMERICA INVENTS ACT **Section 3** of the Leahy-Smith America Invents Act including each amendment made by such section, is repealed and any amendment made by such section to any provision shall be effective as if the provision had not been amended. **Section 5.** ABOLISHING THE PATENT TRIAL AND APPEAL BOARD. (a) REPEAL OF PATENT TRIAL AND APPEAL AND BOARD. (a) REPEAL OF PATENT TRIAL AND APPEAL

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REASON FOR GRANTING THE WRIT

V. Save the Union:

M. **United States v. Arthrex, Inc, 19-1434 (2020)**:

This Court needs this case not *Arthrex* wrong case and still took the case now this Court with no choice if not taking this case after being stay by the Court of Appeals until this Court's decision of *Arthrex* when *Arthrex* far from the truth that this Court should have never take in the first place. There's no difference between Patent and Trademark Judges both are the same staute sections 3-5 of code 35 which deleted appointment by the president of both Patent and Trademark Judges that was Congress's intent they must be appointed by the President. but wait

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N. **Article I, United States Constitution**

Obviously, Sec. 6 of Title 1 USC was circumvented in cash or by resources couldn't been a mistake instead a takeout for how when that how was that the engrossed bill passed by both houses was not printed in the enrolled bill.[18]

Since the law that was pass by both houses under Article 1 never passed Article 2 so there can't be Article 3 to review what never got pass 2, the Take Case Clause never

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All legislative Power wherein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Art. I, § 1,

Before a bill passed by both houses of Congress can become law, it must be "presented to the President of the United States. Art. I, § 7 cl. 2, 3

Congress power to make all laws shall be necessary and proper for carrying into Execution. Art. I, § 8

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In the case of *Public Citizen v. Clerk of the Court*, cert. denied by this Court, 546 U.S. 320, (2006) is not like here this here is the farm bill that never got catch there involved the bill was not the same as engrossed by both houses, which as here engrossed by both houses the same.

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CONCLUSION

The truth is unstoppable for *Who* god over country not the other way around.

Dated June 7th, 2021

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APPENDIX (A)

United States Court of Appeals
for the Federal Circuit

ALBERTO SOLAR-SOMOHANO & WHO
Appellants
v
THE COCA-COLA COMPANY,
Appellee
&
UNITED STATES,
Intervenor

2019-2414

Appeal from the United States Patent and Trademark Office, Trademark Trial and Appeal Board

SUA SPONTE

PER CURIAM.

ORDER

IT IS ORDERED THAT:The above-captionedappeals are removed from thecourt's June 8, 2021calendar and stayed pending the Supreme Court's decision in *United States v. Arthrex, Inc.*,No. 19-1434.1 Following that decision, this court may request supplemental briefing from the parties concerningwhether, and to what extent, that decision affects the appropriate disposition of these cases.

April 27, 2021
Date

FOR THE COURT
/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

1
The Supreme Court also granted petitions forwrits of certiorari in *Smith & Nephew, Inc. v. Arthrex,Inc.*, No. 19-1452, and *Arthrex, Inc. v. Smith & Nephew,Inc.*, No. 19-1458, and consolidated those cases with No.19-1434 for briefing and oral argument.

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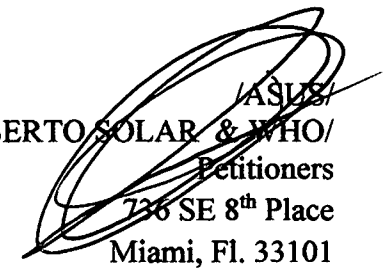

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