

No. 20-853

IN THE
Supreme Court of the United States

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

Petitioner,

v.

FALL LINE PATENTS, LLC, *et al.*,

Respondents.

(For Continuation of Caption See Inside Cover)

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

**RESPONSE OF FALL LINE PATENTS, LLC AND
SNYDERS HEART VALVE LLC IN SUPPORT OF
THE PETITION FOR WRIT OF CERTIORARI**

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ANDREI IANCU, UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR, U.S. PATENT AND TRADEMARK OFFICE,
Petitioner,

v.

BOTTOMLINE TECHNOLOGIES (DE) INC.,
Respondent.

ANDREI IANCU, UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR, U.S. PATENT AND TRADEMARK OFFICE,
Petitioner,

v.

JAMES GELSIN MARX,
Respondent.

UNITED STATES OF AMERICA,
Petitioner,

v.

SNYDERS HEART VALVE LLC, *et al.*,
Respondents.

ANDREI IANCU, UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR, U.S. PATENT AND TRADEMARK OFFICE,
Petitioner,

v.

C.A. CASYSO GMBH, *et al.*,
Respondents.

ANDREI IANCU, UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR, U.S. PATENT AND TRADEMARK OFFICE,
Petitioner,

v.

UNILOC 2017 LLC, *et al.*,
Respondents.

QUESTIONS PRESENTED

1. Respondent Fall Line Patents, LLC agrees with petitioner that the Court's decision in *Arthrex* will govern the Fall Line case. Should the petition in the Fall Line case be held and then disposed of as appropriate following the issuance of this Court's judgment in *Arthrex*?

2. Respondent Snyders Heart Valve LLC has waived its Appointments Clause challenge. That was the only issue raised on appeal that the Federal Circuit reached. Should this Court grant the petition for the Snyders case, vacate the Federal Circuit's judgment, and remand to the Federal Circuit so that it can reach the remaining issues raised on appeal?

CORPORATE DISCLOSURE STATEMENT

Neither respondent Fall Line Patents, LLC nor respondent Snyders Heart Valve LLC has a parent corporation. No publicly held corporation owns 10% or more of either Fall Line's or Snyders's stock.

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CASES

Arthrex, Inc. v. Smith & Nephew,
941 F.3d 1320 (Fed. Cir. 2019), cert. granted,
Nos. 19-1434, 19-1452, & 19-1458 (Oct. 13, 2020) . . .2, 3

CONSTITUTION, STATUTES & REGULATIONS

U.S. Const. Art. II, § 2, Cl. 2
(Appointments Clause)2, 3

OTHER

Gen. Order in Cases Remanded Under Arthrex, Inc., 941 F.3d 1320 (Fed. Cir. 2019)
(PTAB May 1, 2020)2

INTRODUCTION

Respondent Fall Line Patents, LLC agrees with petitioner that the Court's decision in *United States v. Arthrex, Inc.*, Case No. 19-1434, and the consolidated cases (Nos. 19-1452 and 19-1458), may warrant granting, vacating, and remanding to the Federal Circuit. Fall Line thus agrees that, in the Fall Line case, the Court should hold the petition for its decision in *Arthrex*, and then dispose of it accordingly.

Respondent Snyders Heart Valve LLC also agrees with petitioner that the Court's decision in *Arthrex* may warrant granting, vacating, and remanding. But in the Snyders case, granting, vacating, and remanding is additionally warranted no matter how (or when) the Court decides *Arthrex*. Snyders has waived its Appointments Clause challenge—not only eliminating the basis for the Federal Circuit's judgment below, but also providing petitioner with the exact relief it seeks from the Court. Accordingly, for the Snyders case, the Court should grant, vacate, and remand so that the Federal Circuit can reach Snyders' merits issues.

STATEMENT

In IPR2018-00043, Unified Patents, LLC filed an *inter partes* review petition with the Patent Trial and Appeal Board challenging the patentability of several claims of U.S. Patent No. 9,454,748. The Board declared those claims unpatentable in its final written decision. *Unified Patents Inc. v. Fall Line Patents, LLC*, IPR2018-00043, Paper 34 (PTAB, April 4, 2019).

In IPR2018-00107, St. Jude Medical, LLC filed an *inter partes* review petition with the Board challenging the patentability of several claims of U.S. Patent No. 6,821,297. The Board declared those claims unpatentable in its final written decision. *St. Jude Med., LLC v. Snyders Heart Valve LLC*, IPR2018-00107, Paper No. 55 (PTAB, May 2, 2019).

Respondents Fall Line and Snyders each appealed to the Federal Circuit on the ground that the Board was not properly appointed under the Appointments Clause. In view of its prior decision in *Arthrex, Inc. v. Smith & Nephew*, 941 F.3d 1320, 1338 (Fed. Cir. 2019), the Federal Circuit vacated the Board's final written decisions and remanded for further proceedings before newly constituted panels of the Board. *Fall Line Patents, LLC v. Unified Patents, LLC*, No. 2019-1956, 818 Fed. Appx. 1014 (Fed. Cir. July 28, 2020); *Snyders Heart Valve LLC v. St. Jude Med., LLC*, No. 2019-2111, 825 Fed. Appx. 888 (Fed. Cir. Sept. 9, 2020). The Board stayed the remand proceedings in view of the *Arthrex* cases pending before this Court. *See Gen. Order in Cases Remanded Under Arthrex, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019) (PTAB May 1, 2020).

Snyders also raised several merits issues on appeal that were not reached by the Federal Circuit. After the Federal Circuit's decision, Snyders expressly waived its Appointments Clause challenge, leaving only those merits issues. *St. Jude Med., LLC v. Snyders Heart Valve LLC*, IPR2018-00107, Paper No. 57. For the avoidance of doubt, Snyders hereby again expressly waives its Appointments Clause challenge.

On December 22, 2020, the government filed this petition for certiorari, which asks the Court to hold its petition pending disposition of *United States v. Arthrex, Inc.*, No. 19-1434, and the consolidated cases (Nos. 19-1452 and 19-1458), and then to dispose of it as appropriate in light of the Court's *Arthrex* ruling. The Court docketed the petition on December 28, 2020.

The Court called for a response to the petition on February 22, 2021. The Court's call appears to have been addressed only to counsel for respondents Fall Line and Snyders. This response is submitted on behalf of only them. Counsel for Fall Line and Snyders has forwarded the Court's call for response to counsel for the remaining respondents listed on the proof of service filed with the petition.

ARGUMENT

Fall Line adopts petitioner's argument section in full. *See* Pet. 9-10. For example, Fall Line agrees with petitioner that, if the Court reverses in *Arthrex*, then the Court should vacate the judgment of the Federal Circuit and remand for further proceedings. The petition in the Fall Line case should thus be held pending the issuance of this Court's decision in *Arthrex*, and then should be disposed of as appropriate in light of that decision.

Snyders also agrees with petitioner that, if the Court reverses in *Arthrex*, then granting, vacating, and remanding would be warranted. But there is an additional reason why the Court should grant, vacate, and remand in the Snyders case: Snyders has voluntarily waived its Appointments Clause challenge. That waiver eliminates

the only basis for the judgment below. It also provides petitioner with the exact relief that it seeks from the Court. So no matter how (or when) the Court decides *Arthrex*, the Court should grant the petition, vacate the judgment of the Federal Circuit, and remand so that the Federal Circuit can reach Snyders's merits issues.

CONCLUSION

For the Fall Line case, the Court should hold the petition pending its decision in *Arthrex*, and then dispose of it accordingly. For the Snyders case, the Court should grant the petition, vacate the judgment of the Federal Circuit, and remand for further proceedings.

Respectfully submitted,

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