

19-1434 UNITED STATES V. ARTHREX, INC.

DECISION BELOW: 941 F.3d 1320

LOWER COURT CASE NUMBER: 2018-2140

QUESTION PRESENTED:

1. Whether, for purposes of the Appointments Clause, U.S. Const. Art. II, § 2, Cl. 2, administrative patent judges of the U.S. Patent and Trademark Office are principal officers who must be appointed by the President with the Senate's advice and consent, or "inferior Officers" whose appointment Congress has permissibly vested in a department head.

2. Whether the court of appeals erred by adjudicating an Appointments Clause challenge brought by a litigant that had not presented the challenge to the agency.

THE PETITION FOR A WRIT OF CERTIORARI IN No. 19-1434 IS GRANTED AS TO FEDERAL CIRCUIT CASE No. 2018-2140

CONSOLIDATED WITH 19-1952 AND 19-1958 FOR ONE HOUR ORAL ARGUMENT. LIMITED TO QUESTIONS 1 AND 2 AS SET FORTH IN THE JULY 22, 2020 MEMORANDUM FOR THE UNITED STATES.

1. Whether, for purposes of the Appointments Clause, U.S. Const. Art. II, § 2, Cl. 2, administrative patent judges of the U.S. Patent and Trademark Office are principal officers who must be appointed by the President with the Senate's advice and consent, or "inferior Officers" whose appointment Congress has permissibly vested in a department head.

2. Whether, if administrative patent judges are principal officers, the court of appeals properly cured any Appointments Clause defect in the current statutory scheme prospectively by severing the application of 5 U.S.C. 7513(a) to those judges.

CERT. GRANTED 10/13/2020