

No. 19-1434, 19-1459

---

---

IN THE  
**Supreme Court of the United States**

---

UNITED STATES OF AMERICA,

*Petitioner,*

*v.*

ARTHREX, INC., *et al.*

*Respondents.*

---

POLARIS INNOVATIONS LIMITED,

*Petitioner,*

*v.*

KINGSTON TECHNOLOGY COMPANY, INC., *et al.*

*Respondents.*

---

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

---

---

**AMICUS CURIAE BRIEF OF THE NEW YORK  
INTELLECTUAL PROPERTY LAW ASSOCIATION  
IN SUPPORT OF THE UNITED STATES' PETITION  
FOR WRIT OF CERTIORARI**

---

---

COLMAN RAGAN  
*President*  
*New York Intellectual*  
*Property Law Association*  
2125 Center Avenue,  
Suite 406  
Fort Lee, NJ 07024

MELVIN C. GARNER  
*Counsel of Record*  
ROBERT M. ISACKSON  
*President Elect and Board*  
*Liaison, Amicus Briefs*  
*Committee*  
LEASON ELLIS LLP  
One Barker Avenue  
White Plains, NY 10601  
(914) 288-0022  
garner@leasonellis.com

*Counsel for Amicus Curiae*

*(Additional Counsel Listed on Inside Cover)*

July 29, 2020

---

---

297460

ROBERT J. RANDO  
*Second Vice President and  
Board Liaison, PTAB  
Committee*

THE RANDO LAW FIRM P.C.  
6800 Jericho Turnpike,  
Suite 120W  
Syosset, NY 11791  
(516) 799-9800

KSENIYA TAKHISTOVA  
Seven Ellison Avenue  
East Brunswick, NJ 08816

CHARLES E. MILLER  
LEICHTMAN LAW PLLC  
228 East 45th Street, Suite 605  
New York, NY 10017  
(212) 419-5210

*Counsel for Amicus Curiae*

**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES .....	ii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
II. SUMMARY OF THE ARGUMENT .....	2
III. ARGUMENT .....	4
A. The Issues Raised by the United States Are the Subject of Substantial Debate and Should be Addressed by This Court. ....	5
B. The Important Issues Raised by This Case Require Prompt Resolution by this Court. .	9
IV. CONCLUSION .....	11

TABLE OF CITED AUTHORITIES

	<i>Page</i>
<i>Arthrex, Inc. v. Smith &amp; Nephew, Inc.</i> , 953 F.3d 760 (Fed. Cir. 2020) . . . . .	4
<i>Arthrex, Inc. v. Smith &amp; Nephew, Inc.</i> , 941 F.3d 1320 (Fed. Cir. 2019). . . . .	<i>passim</i>
<i>Customedia Techs., LLC. v. DISH Network Corp.</i> , No. 19-1001 (Fed. Cir. Dec. 23, 2019) . . . . .	9
<i>Edmond v. United States</i> , 520 U.S. 651 (1997). . . . .	3, 5, 6, 7
<i>Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.</i> , 561 U.S. 477 (2010) . . . . .	7
<i>Freytag v. Commissioner</i> , 501 U.S. 868 (1991) . . . . .	7
<i>In re Hennen</i> , 38 U.S. 230 (1839). . . . .	8
<i>Intercollegiate Broad. Sys. v. Copyright Royalty Bd.</i> , 684 F.3d 1332 (D.C. Cir. 2012) . . . . .	8
<i>Lucia v. SEC</i> , 138 S. Ct. 2044 (2018). . . . .	7
<i>Morrison v. Olson</i> , 487 U.S. 654 (1988). . . . .	8

*Cited Authorities*

	<i>Page</i>
<i>Myers v. United States</i> , 272 U.S. 51 (1926) . . . . .	8
<i>Polaris Innovations Ltd. v. Kingston Tech. Co.</i> , 792 Fed. Appx. 820 (Fed. Cir. 2020) . . . . .	3, 7, 8
<i>Steuben Foods, Inc. v. Nestle USA, Inc.</i> , No. 20-1082 (Fed. Cir. Dec. 18, 2019) . . . . .	10
<i>Uniloc 2017 LLC v. Facebook, Inc.</i> , No. 18-2251 (Fed. Cir. Oct. 31, 2019) . . . . .	9
<i>Virtnetx Inc. v. Cisco Sys., Inc.</i> , No. 19-1671 (Fed. Cir. Dec. 18, 2019) . . . . .	10
 <b>Statutes</b>	
5 U.S.C. §7513(a) . . . . .	6
 <b>Constitution</b>	
U.S. CONST., Art. II, § 2, cl. 2 . . . . .	2, 4
 <b>Rules</b>	
Sup. Ct. R. 30.1 . . . . .	1
Sup. Ct. R. 37.2(a) . . . . .	1
Sup. Ct. R. 37.6 . . . . .	1

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.