

Nos. 19-1434, 19-1452, and 19-1458

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**In the Supreme Court of the United States**

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UNITED STATES OF AMERICA, PETITIONER

*v.*

ARTHREX, INC., ET AL.

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

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**BRIEF FOR THE UNITED STATES**

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(Additional Captions On Inside Cover)

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SMITH & NEPHEW, INC., ET AL., PETITIONERS

*v.*

ARTHREX, INC., ET AL.

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ARTHREX, INC., PETITIONER

*v.*

SMITH & NEPHEW, INC., ET AL.

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## QUESTIONS 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, 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.

(I)

## PARTIES TO THE PROCEEDING

Petitioner is the United States of America, which intervened in the court of appeals pursuant to 28 U.S.C. 2403(a).

Respondents are Arthrex, Inc., which was the appellant in the court of appeals; and Smith & Nephew, Inc. and Arthrocare Corp., which were the appellees in the court of appeals.

(II)

TABLE OF CONTENTS

Page

Opinions below ..... 1

Jurisdiction ..... 2

Constitutional and statutory provisions involved..... 3

Statement:

    A. Statutory background..... 3

    B. The present controversy..... 8

Summary of argument ..... 13

Argument:

    Administrative patent judges are inferior officers  
    whose appointment Congress has validly entrusted to  
    the Secretary of Commerce..... 16

    A. Under the Appointments Clause, an officer whose  
    work is subject to sufficient direction and  
    supervision by Senate-confirmed officers is an  
    inferior officer ..... 17

    B. Administrative patent judges are inferior officers  
    because their work is subject to significant direction  
    and supervision by two different Senate-confirmed  
    officers ..... 25

    C. The Federal Circuit’s contrary conclusion is  
    incorrect ..... 33

        1. The court of appeals erred in its application of  
        *Edmond* ..... 33

        2. History provides no sound basis for classifying  
        administrative patent judges as principal  
        officers..... 41

Conclusion ..... 45

(III)

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