## In The Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

V.

ARTHREX, INC., et al.,

Respondents.

SMITH & NEPHEW, INC., et al.,

Petitioners,

v.

ARTHREX, INC., et al.,

Respondents.

ARTHREX, INC.,

Petitioner,

v.

SMITH & NEPHEW, INC., et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF OF AMICI CURIAE ACUSHNET AND CLEVELAND GOLF IN SUPPORT OF PETITIONERS IN NOS. 19-1434 AND 19-1452

PETER J. BRANN
(Counsel of Record)
DAVID SWETNAM-BURLAND
STACY O. STITHAM
BRANN & ISAACSON
184 Main St., P.O. Box 3070
Lewiston, ME 04243-3070
(207) 786-3566
pbrann@brannlaw.com
Attorneys for Amici Curiae

COCKLE LEGAL BRIEFS (800) 225-6964 WWW.COCKLELEGALBRIEFS.COM



### TABLE OF CONTENTS

P	age
Interest of Amici Curiae	1
Summary of Argument	3
Argument	5
The PTAB Conducts Specialized Agency Proceedings Subject to Substantial Constraints that Improve Patent Quality and Limit Unnecessary and Counterproductive Litigation	5
A. The PTAB Conducts Specialized Agency Proceedings Subject to Substantial Con- straint by the USPTO Director	5
B. The PTAB Resolves Matters More Efficiently, Economically, and Effectively than Federal Patent Litigation	10
C. The PTAB Shares Features with Many Other Federal Government Boards and Ad- judicators, and so the Decision Here Could Have Major Implications	18
Conclusion	20



### TABLE OF AUTHORITIES

P	age
Cases	
Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131 (2016)	7, 8
In re Global Holdings, LLC, 927 F.3d 1373 (Fed. Cir. 2019)	9
Mathews v. Eldridge, 424 U.S. 319 (1976)	18
Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC, 138 S. Ct. 1365 (2018)	9
SAS Institute, Inc. v. Iancu, 138 S. Ct. 1348 (2018)	7
Thryv, Inc v. Click-to-Call Techs., LP, 140 S. Ct. 1367 (2020)	, 10
Uniloc 2017 LLC v. Hulu, LLC, 966 F.3d 1295 (Fed. Cir. 2020)	9
STATUTES	
5 U.S.C. §§ 554-557	18
35 U.S.C. § 2(a)(1)	5
35 U.S.C. § 3(a)(1)	5, 7
35 U.S.C. § 3(b)(1)	7
35 U.S.C. § 3(b)(2)(A)	7
35 U.S.C. § 6(a)	7, 8
35 U.S.C. § 6(c)	7, 8
35 U.S.C. § 102	6
35 U.S.C. 8 103	6



### TABLE OF AUTHORITIES—Continued

	Page
35 U.S.C. § 111(a)	6
35 U.S.C. § 131	6
35 U.S.C. § 134	6
35 U.S.C. § 311(a)	6
35 U.S.C. § 311(b)	6
35 U.S.C. § 311(c)	6
35 U.S.C. § 314(d)	6
35 U.S.C. § 315(b)	6
35 U.S.C. § 316(a)(5)	7
35 U.S.C. § 316(a)(10)	8
35 U.S.C. § 316(a)(11)	7, 12
35 U.S.C. § 317(a)	8
35 U.S.C. § 318(a)	8
35 U.S.C. § 318(b)	9
35 U.S.C. § 319	9
Leahy-Smith America Invents Act (AIA), Pub. L. No. 112-29, 125 Stat. 284 (2011)	
Rules	
37 C.F.R. § 42.51	7
37 C.F.R. § 42.70(a)	8
37 C.F.R. § 42.71(d)	8
37 C.F.R. § 42.108(c)	6



### TABLE OF AUTHORITIES—Continued

	Page
Patent Trial and Appeal Board, Standard Operating Procedure 1 (Rev. 15), § III.M (expanded panels) (available at https://www.uspto.gov/sites/default/files/documents/SOP%201%20R15%20FINAL.pdf)	8
Patent Trial and Appeal Board, Standard Operating Procedure 2 (Rev. 10), § II.B (available at https://www.uspto.gov/sites/default/files/documents/SOP2%20R10%20FINAL.pdf)	9
Patent Trial and Appeal Board, Standard Operating Procedure 2 § II.C (available at https://www.uspto.gov/sites/default/files/documents/SOP2%20R10%20FINAL.pdf)	9
S. Ct. R. 37.2(a)	1
S. Ct. R. 37.6	1
Miscellaneous	
America Invents Act Blog, Federal Circuit PTAB Appeal Statistics Through April 30, 2020 (May 29, 2020) (available at https://www.finnegan.com/en/insights/blogs/america-invents-act/federal-circuit-ptab-appeal-statistics-through-april-30-2020.html)	17
American Intellectual Property Law Association, 2019 Report of the Economic Survey	13
Henry J. Friendly, Some Kind of Hearing, 123 U. Pa. L. Rev. 1267 (1975)	18



# DOCKET A L A R M

## 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.

