

No. 19-1434

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

ARTHREX, INC., *et al.*
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Federal Circuit

**BRIEF OF
JASON V. MORGAN AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

JASON V. MORGAN
Amicus and Counsel of Record
2630 Skidmore Cir
Vienna, VA 22180
jvmorgan@gmail.com
443-538-4338

TABLE OF CONTENTS

Table of Authorities	ii
Interest of the Amicus Curiae	1
Summary of Argument	2
Argument	5
Removal protections for APJs do not improperly insulate APJs from Presidential control	5
The Director is the principal officer with final authority to act or refuse to act on PTAB decisions	12
The Director can shape each APJ's role on the PTAB to determine what judicial duties, if any, each APJ is authorized to fulfill	16
Removal protections promote confidence that APJs are applying the law faithfully and rendering impartial, fact-based decisions	19
Legislative and executive action, not judicial intervention, should shape any remedies needed to address Constitutional deficiencies to the extent practicable	23
Conclusion	25

TABLE OF AUTHORITIES

Cases

<i>Arthrex, Inc. v. Smith & Nephew, Inc.</i> , 941 F.3d 1320 (Fed. Cir. 2019), cert. granted sub nom., <i>United States v. Arthrex, Inc.</i> , 592 U.S. ____ (Oct. 13, 2020) (No. 19-1434)	passim
<i>Edmond v. United States</i> , 520 U.S. 651 (1997) ..	6, 15, 16, 17
<i>Ex parte Hennen</i> , 38 U.S. (13 Pet.) 230 (1839)	6
<i>Free Enterprise Fund v. Public Company Accounting Oversight Bd.</i> , 561 U.S. 477 (2010)	passim
<i>Hamilton v. United States Postal Service</i> , 123 M.S.P.R. 404 (MSPB 2016)	24
<i>Humphrey’s Executor v. United States</i> , 295 U.S. 602 (1935))	10
<i>In re Alappat</i> , 33 F.3d 1526 (Fed. Cir. 1994) 13, 14, 22	
<i>In re Beauregard</i> , 53 F.3d 1583 (Fed. Cir. 1995) 15, 22	
<i>In re Boloro Global Ltd.</i> , 963 F.3d 1380 (Fed. Cir. July 7, 2020)	18
<i>Intercollegiate Broad. Sys. v. Copyright Royalty Bd.</i> , 684 F.3d 1332 (D.C. Cir. 2012)	passim
<i>Kalaris v. Donovan</i> , 697 F.2d 376 (D.C. Cir.1983)	7
<i>Morrison v. Olson</i> , 487 U.S. 654, 693 (1988)	10
<i>Oil States Energy Services, LLC v. Greene’s Energy Grp., LLC</i> , 584 U.S. ____ (2018)	17
<i>Polaris Innovations Ltd. v. Kingston Tech. Co.</i> , No. 2018-1831, slip op. 11–12 (Fed. Cir. Jan. 31, 2020) 6	

<i>Railroad Retirement Bd. v. Alton R. Co.</i> , 295 U.S. 330 (1935)	24
---	----

Constitutional Provisions

U.S. Const. art. II.....	7
U.S. Const. art. II, § 2, cl. 2 (Appointments Clause)	passim
U.S. Const. art. III	13, 14, 15

Statutes

10 U.S.C. § 837.....	17
15 U.S.C. § 1501.....	8
15 U.S.C. §§ 7213–15 (2006 ed. and Supp. II)	20
17 U.S.C. § 701.....	21
17 U.S.C. § 802.....	21
2 U.S.C. § 136.....	7
35 U.S.C. § 131.....	20
35 U.S.C. § 134.....	20
35 U.S.C. § 141.....	17
35 U.S.C. § 153.....	15, 19, 22
35 U.S.C. § 3.....	8, 18, 23, 24
35 U.S.C. § 314.....	19
35 U.S.C. § 318.....	13, 17, 22
35 U.S.C. § 319.....	17
35 U.S.C. § 321.....	19
35 U.S.C. § 6.....	14, 16, 17
5 U.S.C. § 7513.....	18
Act of Feb. 19, 1897, ch. 265, 29 Stat. 538.....	8

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.