

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

IN THE
Supreme Court of the United States

UNITED STATES,

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 THE INTELLECTUAL PROPERTY LAW
ASSOCIATION OF CHICAGO AS *AMICUS CURIAE*
IN SUPPORT OF NO PARTY**

MARGARET M. DUNCAN
LOYOLA UNIVERSITY CHICAGO
SCHOOL OF LAW
25 East Pearson Street
Chicago, IL 60611
(312) 915-7120

JOHN R LINZER
Counsel of Record
QUARLES & BRADY LLP
300 N. LaSalle Street,
Suite 4000
Chicago, IL 60654
(312) 715-5059
john.linzer@quarles.com

Counsel for Amicus Curiae

(For Continuation of Appearances See Inside Cover)

300398

OF COUNSEL

MARC V. RICHARDS

PRESIDENT

INTELLECTUAL PROPERTY LAW

ASSOCIATION OF CHICAGO

P.O. Box 472

Chicago, IL 60690

(312) 321-4200

Counsel for Amicus Curiae

JUDY K. HE

HAYNES AND BOONE, LLP

180 North LaSalle Street,

Suite 2215

Chicago, IL 60601

(312) 216-1620

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
ISSUES PRESENTED	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. The Appointment of Administrative Patent Judges Under Title 35 Does Not Violate the Appointments Clause	4
A. The Statutory Scheme of Title 35 Confirms Congress’s Intent to Establish Administrative Patent Judges As Inferior Officers	6
B. The Federal Circuit Improperly Created a Bright Line Rule from <i>Edmond</i> , Despite the Need for a Totality of the Circumstances Analysis	8
C. If the Court Believes this is a Close Case, It Should Defer to Congress and Hold that Administrative Patent Judges are Inferior Officers.....	14
II. Because Administrative Patent Judges are Inferior Officers For Purposes of the Appointments Clause, The Court Need Not Address Whether the <i>Arthrex</i> Remedy Was Proper	15
III. A Holding that APJs are Principal Officers and that the <i>Arthrex</i> Remedy Was Not Proper Has Far-Reaching Implications Beyond the Scope of the Present Cases	15

CONCLUSION..... 18

TABLE OF AUTHORITIES**Cases**

<i>Arthrex, Inc. v. Smith & Nephew, Inc.</i> , 941 F.3d 1320 (Fed. Cir. 2019)	1, 5, 17
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010)	9
<i>Edmond v. United States</i> , 520 U.S. 651 (1997)	passim
<i>Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.</i> , 535 U.S. 722 (2002)	18
<i>Free Enter. Fund v. Public Co. Acct. Oversight Bd.</i> , 561 U.S. 477 (2010)	10
<i>Halo Elecs., Inc. v. Pulse Elecs., Inc.</i> , 136 S. Ct. 1923 (2016)	9
<i>In re Boloro Glob. Ltd.</i> , 963 F.3d 1380 (Fed. Cir. 2020)	17
<i>In re Sealed Case</i> , 838 F.2d 476 (D.C. Cir. 1988)	14
<i>Keene Corp. v. United States</i> , 508 U.S. 200 (1993)	7
<i>Kirtsaeng v. John Wiley & Sons</i> , 136 S. Ct. 1979 (2016)	9
<i>Morrison v. Olson</i> , 487 U.S. 654 (1988)	5, 6, 8, 14
<i>Polaris Innovations Limited v. Kingston Tech. Co.</i> , 792 Fed. App'x 820 (Fed. Cir. Jan. 31, 2020)	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.