

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK CORPORATION and DISH NETWORK L.L.C.,
Petitioner

v.

CUSTOMEDIA TECHNOLOGIES, L.L.C.,
Patent Owner

Case No. CBM2017-00023
Patent 8,719,090

**PATENT OWNER CUSTOMEDIA TECHNOLOGIES L.L.C.'S
NOTICE REGARDING PENDING SUPREME COURT CASE WITH
BEARING ON THIS CBM REVIEW**

Case No. CBM2017-00023

Patent No.: 8,719,090

On October 13, 2020, the Supreme Court granted certiorari in *United States v. Arthrex, Inc.*, Case No. 19-1434. 2020 WL 6037206, at *1 (U.S. Oct. 13, 2020). The Court will answer the question of whether the statutory provisions for appointment of administrative patent judges are constitutional, and the question of whether the remaining provisions governing *inter partes* review—as well as CBM review—are severable from those provisions. *Id.* Those remaining provisions include 35 U.S.C. § 318(c) and 35 U.S.C. § 328(c) the provisions authorizing the Director to issue a certificate of cancellation.

Should the Court find the provisions governing CBM review unconstitutional, the Director will lack authority to issue a cancellation certificate cancelling any claims of the '090 Patent. Any such action would be reviewable in court under the Administrative Procedure Act. Because the Court is expected to render a decision within a relatively short timeframe, Customedia submits that prudence and fundamental fairness require that the Director refrain from issuing any cancellation certificate regarding the '090 Patent until the Court issues its decision.

Dated: December 31, 2020

Respectfully Submitted

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THE MORT LAW FIRM, PLLC

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Patent No.: 8,719,090

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served electronically via email on December 31, 2020, in its entirety on the following:

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