

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NVIDIA CORPORATION,
Petitioner,

v.

POLARIS INNOVATIONS LIMITED,
Patent Owner.

IPR2017-00901 (Patent 7,405,993 B2)
IPR2017-01500 (Patent 6,532,505 B1)

Before SCOTT R. BOALICK, *Chief Administrative Patent Judge*.

BOALICK, *Chief Administrative Patent Judge*.

ORDER

On September 13, 2021, the United States Court of Appeals for the Federal Circuit issued orders in the appeals of each of the above-referenced cases, remanding the cases to the Office “for the limited purpose of allowing the parties to seek further action by the Director.” *Polaris Innovations Ltd. v. Hirshfeld*, No. 2019-1483, ECF No. 76, at 2 (Sept. 13, 2021); *Polaris Innovations Ltd. v. Hirshfeld*, No. 2019-1484, ECF No. 84, at 2 (Sept. 13, 2021). On September 23, 2021, Polaris Innovations Limited (“Patent Owner”) sent an email to the Board in each case requesting “a conference call with the Board to seek guidance regarding

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how the remand should proceed.” IPR2017-01500, Ex. 3001.¹ Patent Owner’s email explains that Petitioner NVIDIA Corporation is no longer participating in either case “due to the parties’ settlement.” *Id.* According to Patent Owner, “the parties filed a timely joint motion to terminate (Paper 33) that the Board should grant and that doing so is consistent with the Federal Circuit’s remand instructions” in each case. *Id.*

The parties filed the joint motion to terminate prior to the United States Supreme Court’s decision in *United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (June 21, 2021). *See* Paper 33 (filed June 10, 2020). The joint motion to terminate in each case indicates that the Federal Circuit vacated the Board’s final written decision and remanded the case to the Board for proceedings consistent with the Federal Circuit’s decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 940 F.3d 1320 (Fed. Cir. 2019) (en banc reh’g denied Mar. 23, 2020). Paper 33, 2–3. The Supreme Court, however, vacated the Federal Circuit’s *Arthrex* decision, granted a pending Petition for Certiorari from the appeals in these cases, vacated the Federal Circuit’s judgment in the appeals from these cases, and remanded the appeals in these cases to the Federal Circuit for consideration in light of the *Arthrex* decision. *See Polaris*, No. 2019-1483, ECF No. 71 (July 30, 2021); *Polaris*, No. 2019-1484, ECF No. 72 (July 30, 2021). The Federal Circuit subsequently vacated its judgments, recalled the mandates, and reinstated each of the appeals. *See Polaris*, No. 2019-1483, ECF No. 72 (Aug. 12, 2021); *Polaris*, No. 2019-1484, ECF No. 73 (Aug. 12, 2021). Further, in the appeal from IPR2017-01500, the Federal Circuit’s limited remand order denied a motion to vacate the Board’s final written decision

¹ Patent Owner sent substantially the same email for both cases. This order refers to the email Patent Owner sent for IPR2017-01500. Unless otherwise noted, this order also refers to the papers filed in IPR2017-01500, as they are substantively the same as the papers filed in IPR2017-00901.

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that Patent Owner filed in that appeal. *See Polaris*, No. 2019-1483, ECF No. 76, at 2 (Sept. 13, 2021) (“Polaris’s motion to vacate the final written decision is denied.”). Thus, the Board’s final written decision in each of these cases is not vacated, and it is not necessary for the Board to issue a new final written decision in either of these cases. Instead, the appropriate course of action on remand in each of these cases is to authorize Patent Owner to request Director review consistent with the Office’s interim guidance.² Patent Owner may file a request for Director review within 14 days of this Order. If Patent Owner does not file a request for Director review within the allotted time, then the Board’s final written decision will remain the final agency decision in each case. No conference call with the Board is necessary.

Accordingly, it is:

ORDERED that Patent Owner shall have 14 days to file a request for Director review in each case; and

FURTHER ORDERED that the Board’s final written decision in each case will remain the final agency decision if Patent Owner does not file a request for Director review within 14 days.

² *See USPTO implementation of an interim Director review process following Arthrex*, <https://www.uspto.gov/patents/patent-trial-and-appeal-board/procedures/uspto-implementation-interim-director-review>; *see also Arthrex Q&As*, <https://www.uspto.gov/patents/patent-trial-and-appeal-board/procedures/arthrex-qas> (updated July 20, 2021) (setting forth more details about the interim Director review process).

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