

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION
(d/b/a WABTEC CORPORATION)
Petitioner,

v.

SIEMENS MOBILITY, INC.
Patent Owner.

Case IPR2017-02044

U.S. Patent No. 6,609,049

**PATENT OWNER'S NOTICE REGARDING PENDING SUPREME
COURT CASE WITH BEARING ON THIS IPR**

Patent Owner hereby provides notice that the constitutionality of *inter partes* review is being challenged in a case that is presently pending at the U.S. Supreme Court, *Arthrex, Inc. v. Smith & Nephew, Inc. et al.*, Case No. 19-1458. On October 13, 2020, the Supreme Court granted certiorari, and the case will be heard in early 2021.¹

In that case, Arthrex argues that the *inter partes* review statute is unconstitutional in its current form. More particularly, Arthrex contends that the statutory provisions for appointment of administrative patent judges are unconstitutional and that the remaining provisions governing *inter partes* review are not severable from those provisions. Those remaining provisions include 35 U.S.C. § 318(b), the provision authorizing the Director to issue a certificate of cancellation following a final determination of unpatentability.

Should the Supreme Court rule in Arthrex's favor and find the provisions governing *inter partes* review unconstitutional, the Director will lack authority to cancel any claims of the '049 Patent. Any such action would be reviewable in court under the Administrative Procedure Act. Because the Supreme Court is expected to render a decision within a relatively short time, Patent Owner submits that prudence and fundamental fairness dictate that the Director refrain from issuing

¹ Petitioner withdrew from the appeal, and the Director of the U.S.P.T.O. intervened. Patent Owner has maintained the original case caption from the IPR for this Notice.

any cancellation certificate regarding the '049 Patent until the Supreme Court has ruled in *Arthrex*.

Respectfully submitted,

Dated: December 4, 2020

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