

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENERAL ORDER LIFTING
GENERAL ORDER IN CASES INVOLVING
REQUESTS FOR REHEARING UNDER
ARTHREX, INC. V. SMITH & NEPHEW, INC.,
941 F.3D 1320 (FED. CIR. 2019)

GENERAL ORDER

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

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As explained in the General Order in Cases Involving Requests for Rehearing Under *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019) (“General Order in Rehearing Cases”), the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) issued numerous Orders instructing the Patent Trial and Appeal Board (“Board”) to conduct proceedings on remand consistent with the Federal Circuit’s *Arthrex* decision. As also explained in the General Order in Rehearing Cases, the Board received several timely requests for rehearing of Board decisions citing the Federal Circuit’s *Arthrex* decision. To avoid burdening the Office and the parties until all appellate rights had been exhausted, the General Order in Rehearing Cases was issued, holding all cases involving such requests for rehearing in administrative abeyance until the Supreme Court of

General Order Regarding *Arthrex*-Related Requests for Rehearing

the United States (“Supreme Court”) acted on a petition for certiorari or the time for filing such petitions expired.

On June 21, 2021, the Supreme Court vacated the Federal Circuit’s judgment in *Arthrex, Inc. v. Smith & Nephew, Inc.* and remanded to the Acting Director for him to decide whether to rehear the Board’s final written decision. *United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1987–88 (2021). The Supreme Court subsequently granted petitions for certiorari in other cases in which the Federal Circuit remanded to the Board for proceedings consistent with the Federal Circuit’s *Arthrex* decision, vacated the Federal Circuit’s judgment in those cases, and remanded them for further consideration in light of *United States v. Arthrex, Inc.* See *Iancu v. Luoma*, No. 20-74 (June 28, 2021); *Iancu v. Fall Line Patents, LLC*, No. 20-853 (June 28, 2021); *Hirshfeld v. Implicit, LLC*, No. 20-1631 (Oct. 18, 2021).

Now that the Supreme Court has acted on petitions for certiorari in cases that were previously remanded to the Board under the Federal Circuit’s *Arthrex* decision, the General Order in Rehearing Cases is lifted. Those cases are no longer in administrative abeyance.

ORDER

It is therefore ORDERED that the General Order in Rehearing Cases has been lifted and the subject cases are no longer in administrative abeyance.



Scott R. Boalick
Chief Administrative Patent Judge