

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

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ARTHREX, INC., ET AL.,

Respondents.

**On Writs Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit**

**OPENING BRIEF
FOR SMITH & NEPHEW, INC.
AND ARTHROCARE CORP.**

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(Additional captions listed on inside cover.)

SMITH & NEPHEW, INC., ET AL.,

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ARTHREX, INC., ET AL.,

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QUESTIONS PRESENTED

1. Whether, for purposes of the Appointments Clause, U.S. Const. art. II, § 2, cl. 2, administrative patent judges of the U.S. Patent and Trademark Office are principal Officers who must be appointed by the President with the Senate’s advice and consent, or “inferior Officers” whose appointment Congress has permissibly vested in a Department head.

2. Whether, if administrative patent judges are principal Officers, the court of appeals properly cured any Appointments Clause defect in the current statutory scheme prospectively by severing the application of 5 U.S.C. § 7513(a) to those judges.

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

Smith & Nephew, Inc. and ArthroCare Corp. were petitioners in proceedings before the Patent Trial and Appeal Board and appellees in the court of appeals.

Arthrex, Inc. was the patent owner in proceedings before the Patent Trial and Appeal Board and the appellant in the court of appeals.

The United States of America was an intervenor in the court of appeals.

Pursuant to this Court's Rule 29.6, Smith & Nephew, Inc. and ArthroCare Corp. state that Smith & Nephew PLC is their parent corporation and no other publicly held corporation owns 10% or more of the stock of either Smith & Nephew, Inc. or ArthroCare Corp.

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