

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

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ARTHREX, INC., ET AL.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

BRIEF FOR THE UNITED STATES

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(Additional Captions On Inside Cover)

SMITH & NEPHEW, INC., ET AL., PETITIONERS

v.

ARTHREX, INC., ET AL.

ARTHREX, INC., PETITIONER

v.

SMITH & NEPHEW, INC., ET AL.

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.

(I)

PARTIES TO THE PROCEEDING

Petitioner is the United States of America, which intervened in the court of appeals pursuant to 28 U.S.C. 2403(a).

Respondents are Arthrex, Inc., which was the appellant in the court of appeals; and Smith & Nephew, Inc. and Arthrocare Corp., which were the appellees in the court of appeals.

(II)

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