

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-74

UNITED STATES OF AMERICA, PETITIONER

v.

IMAGE PROCESSING TECHNOLOGIES LLC, ET AL.

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

MOTION OF THE UNITED STATES FOR PARTIAL DISMISSAL
OF THE CONSOLIDATED PETITION FOR A WRIT OF CERTIORARI
ONLY WITH RESPECT TO THE JUDGMENT OF THE COURT OF APPEALS
IN IMAGE PROCESSING TECHNOLOGIES LLC V. SAMSUNG ELECTRONICS CO.,
NOS. 2018-2156, 2019-1408, and 2019-1485

Pursuant to Rule 46.2(a) of the Rules this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves to dismiss in part the government's consolidated petition for a writ of certiorari only as to the judgment of the court of appeals in Image Processing Technologies LLC v. Samsung Electronics Co., Nos. 2018-2156, 2019-1408, and 2019-1485. The government does not move to dismiss the petition for a writ of certiorari with respect to any of the other judgments of the court of appeals that are encompassed by the consolidated petition filed under Rule 12.4; the government respectfully submits that the petition should be held with respect to all of those other judgments. The government filed the consolidated petition for a

writ of certiorari on July 23, 2020, and the petition is currently pending before the Court. No fees are currently due the Clerk. Petitioner has assumed the costs with respect to the court of appeals' judgment in Image Processing Technologies LLC, supra. No party to that judgment opposes this motion.

1. These cases concern whether, under the Appointments Clause, U.S. Const. Art. II, § 2, Cl. 2, administrative patent judges of the United States Patent and Trademark Office (USPTO) are principal officers who must be appointed by the President with the advice and consent of the Senate, or "inferior Officers" whose appointment Congress may vest in a department head. In Arthrex, Inc. v. Smith & Nephew, Inc., 941 F.3d 1320 (2019), petitions for cert. pending, Nos. 19-1434 (filed June 25, 2020), 19-1452 (filed June 29, 2020), and 19-1458 (filed June 30, 2020), the Federal Circuit held that administrative patent judges are principal officers and that the statutorily prescribed method of appointing administrative patent judges -- by the Secretary of Commerce acting alone, see 35 U.S.C. 6(a) -- violates the Appointments Clause. 941 F.3d at 1327-1335.

In each of the judgments encompassed by the government's consolidated petition in this case, the court of appeals vacated one or more decisions of the Patent Trial and Appeal Board (Board) based on Arthrex and remanded for further proceedings. On July 23, the government filed a consolidated petition under Rule 12.4

requesting that the Court hold the consolidated petition pending this Court's disposition of the government's petition for a writ of certiorari in Arthrex, and any further proceedings in this Court, and then dispose of the government's consolidated petition as appropriate.

2. Since the filing of the government's consolidated petition, the private parties to one of the Federal Circuit's judgments encompassed by the consolidated petition -- Image Processing Technologies LLC v. Samsung Electronics Co., Nos. 2018-2156, 2019-1408, and 2019-1485 -- have settled their patent dispute and jointly moved to terminate the proceedings before the Board (on remand from the court of appeals) concerning the validity of the relevant patent claims. The Board has granted that request and terminated the post-remand administrative proceedings. In light of that termination, the government no longer seeks review of the court of appeals' order vacating the Board's prior decisions in those particular proceedings. The government accordingly requests that the consolidated petition be dismissed in part, solely with respect to the court of appeals' judgment in Nos. 2018-2156, 2019-1408, and 2019-1485.

The government's consolidated petition for a writ of certiorari in this case also seeks review of 38 additional orders of the Federal Circuit. See Pet. 11-19, 23-26; Pet. App. 3a-84a. The government does not move to dismiss the consolidated petition

as to the court of appeals' judgments in any of those other cases. The government continues to request that the Court hold the consolidated petition as to all of those other cases pending the disposition of the government's petition in Arthrex, No. 19-1434, and any further proceedings in this Court, and then dispose of the consolidated petition as appropriate.*

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

SEPTEMBER 2020

* Because the particular judgment of the court of appeals as to which the government seeks partial dismissal happens to be the case listed in the short caption of the government's consolidated petition, it may be appropriate to revise the case's short caption to refer to one of the other 38 judgments of the court of appeals encompassed by the consolidated petition. For example, the next case listed in the consolidated petition (corresponding to the Federal Circuit's judgment in No. 2019-2315, Pet. App. 3a-4a) is captioned: Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director, U.S. Patent and Trademark Office v. Eugene H. Luoma, et al.