

No. 20–74

In the Supreme Court of the United States

United States of America,

Petitioner,

v.

Image Processing Technologies LLC, et al.

Respondents.

**On Petition for a Writ of Certiorari to
United States Court of Appeals for the
Federal Circuit**

**MEMORANDUM IN RESPONSE FOR
RESPONDENT ROVI GUIDES, INC.**

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QUESTIONS PRESENTED

The Appointments Clause requires principal “Officers of the United States” to be appointed by the President with the advice and consent of the Senate. The court of appeals held that administrative patent judges of the U.S. Patent and Trademark Office are principal officers because they issue final decisions on behalf of the agency that are not reviewable by any other Executive Branch officer and because they are removable from office only for cause. Accordingly, the court of appeals held, Congress’s decision to vest in the Secretary of Commerce the power to appoint those judges was unconstitutional. In an attempt to remedy this constitutional defect, the court of appeals severed and invalidated the removal protections applicable to administrative patent judges, thereby rendering them removable at will by the Secretary of Commerce.

The questions presented in the Government’s petition for certiorari are:

1. Whether the court of appeals correctly held that administrative patent judges are principal officers, where they issue final decisions on behalf of the Executive Branch and are removable only for cause.
2. Whether the court of appeals permissibly considered Rovi’s Appointments Clause challenge, where Rovi raised the issue to the first tribunal with authority to adjudicate it.

RULE 29.6 STATEMENT

Respondent Rovi Guides, Inc. states that its parent corporations are Rovi Corporation, TiVo Corporation, and Xperi Holding Corporation.

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