

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

PFIZER, INC.,
Appellant

v.

CHUGAI PHARMACEUTICAL CO. LTD.,
Appellee

2019-1513, -1514

Appeals from the United States Patent and Trade-
mark Office, Patent Trial and Appeal Board in Nos.
IPR2017-01357 and IPR2017-01358.

ON MOTION

ORDER

Pfizer Inc. submits a motion for supplemental briefing to address this court's recent decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 2018-2140, 2019 WL 5616010 (Fed. Cir. Oct. 31, 2019). Pfizer states that Chugai Pharmaceutical Co., Ltd. objects to the requested relief. The court also construes the motion as notice that Pfizer is seeking to challenge the Patent Trial and Appeal Board's decisions as rendered by administrative patent judges

who were appointed in violation of the Appointments Clause of the Constitution.

Upon notice of the fact that “a party questions the constitutionality of an Act of Congress in a proceeding in which the United States . . . is not a party,” the clerk of this court must “certify that fact to the Attorney General.” Fed. R. App. P. 44(a); *see also* 28 U.S.C. § 2403(a) (“In any action . . . in a court of the United States to which the United States . . . is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene . . . for argument on the question of constitutionality.”).

Upon consideration thereof,

IT IS ORDERED THAT:

(1) Notice of Pfizer’s constitutional challenge is hereby certified to the Attorney General.

(2) The United States’ request to intervene and any response by the United States and Chugai to the motion is due no later than ten days from the date of filing of this order. Any reply in support of the motion is due no later than five days thereafter.

FOR THE COURT

November 22, 2019
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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cc: United States Attorney General