

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

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**SECURITYPROFILING, LLC,**  
*Appellant*

v.

**TREND MICRO, INC.,**  
*Appellee*

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2019-1881

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
02192.

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## ORDER

SecurityProfiling, LLC submits notice that it is challenging the Patent Trial and Appeal Board's final written decision because the Board issued the decision in contravention 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 into 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 SecurityProfiling’s constitutional challenge is hereby certified to the Attorney General.

(2) No later than 30 days from the date of filing of this order, the Attorney General is directed to inform this court whether the United States intends to intervene in this appeal.

(3) The proceedings in the above-captioned appeal are stayed.

FOR THE COURT

December 03, 2019  
Date

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

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cc: United States Attorney General