

NOTE: This order is nonprecedential.

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

POLARIS INNOVATIONS LIMITED,
Appellant

v.

KINGSTON TECHNOLOGY COMPANY, INC.,
Appellee

UNITED STATES,
Intervenor

2018-1768

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2016-
01621.

POLARIS INNOVATIONS LIMITED,
Appellant

v.

KINGSTON TECHNOLOGY COMPANY, INC.,
Appellee

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CO. INC.

UNITED STATES,
Intervenor

2018-1831

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2017-
00116.

Before REYNA, WALLACH, and HUGHES, *Circuit Judges*.

PER CURIAM.

O R D E R

IT IS ORDERED THAT:

The parties and the government shall file supplemental briefing addressing the constitutional questions raised in these cases, including:

- (1) what level of supervision and review distinguish a principal from an inferior officer;
- (2) whether severing the application of Title 5's removal restrictions with respect to APJs under 35 U.S.C. § 3(c) sufficiently remedies the alleged unconstitutional appointment at issue in these appeals;
- (3) whether, and how, the remedy for an Appointments Clause violation differs when it stems from an unconstitutional removal restriction, rather than an unconstitutional appointment itself; and
- (4) whether severing the application of Title 5's removal restrictions with respect to APJs under 35 U.S.C. § 3(c) obviates the need to vacate and remand for a new hearing, given the Supreme Court's holdings on the retroactive application of constitutional rulings.

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CO. INC.

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E.g., Harper v. Virginia Dep't of Taxation, 509 U.S. 86
(1993).

Each party's response is limited to 20 pages, double
spaced, and shall be filed no later than December 6, 2019.

FOR THE COURT

November 8, 2019
Date

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