

NOTE: This order is nonprecedential.

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

VILOX TECHNOLOGIES, LLC,
Appellant

v.

UNIFIED PATENTS INC.,
Appellee

2019-2057

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2018-
00044.

ON MOTION

O R D E R

Vilox Technologies, LLC submits a motion to vacate the decision of the Patent Trial and Appeal Board and remand this case in light of this court's recent decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 2018-2140, 2019 WL 5616010 (Fed. Cir. Oct. 31, 2019). Vilox states that Unified Patents, Inc. does not oppose the motion. The court also construes the motion as a notice that Vilox is challenging the Board's decision as rendered by a panel of

administrative patent judges who were appointed in violation of the Appointments Clause of the Constitution. Vilox separately moves unopposed for an extension of time to file its opening brief.

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 Vilox’s constitutional challenge is hereby certified to the Attorney General.

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

(3) Vilox’s motion for an extension of time is denied as moot. The briefing schedule is stayed. *See* Fed. Cir. R. 31(c).

FOR THE COURT

November 12, 2019
Date

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

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cc: United States Attorney General