

## **Askeladden Advocates for the Supreme Court to Grant the U.S. Government's Petition for Certiorari in *Arthrex***

*Argues that Federal Circuit erred in finding the appointment of Administrative Patent Judges unconstitutional.*

### **For Immediate Release:**

Date: **July 29, 2020**

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New York, NY — Askeladden filed an amicus brief today with the U.S. Supreme Court in *U.S. v. Arthrex, Inc. et al.* advocating for the Court to grant the U.S. Government's petition and address whether, for purposes of the Appointments Clause of the U.S. Constitution, administrative patent judges ("APJs") of the Patent Trial and Appeals Board ("PTAB") of the U.S. Patent and Trademark Office ("PTO") are principal officers who must be appointed by the President with the Senate's advice and consent, or "inferior Officers" whose appointment Congress has permissibly vested in a department head.

The U.S. Government filed its petition challenging the decision by the U.S. Court of Appeals for the Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.* In that case, the Federal Circuit held that the patent statute "as currently constructed makes the APJs principal officers" that were appointed in violation of the Appointments Clause of the U.S. Constitution. Since then, the Federal Circuit in over 100 cases has continued to apply *Arthrex* to summarily vacate, reverse, and remand final written decisions of the PTAB APJs in *inter partes* reviews issued on or before October 31, 2020.

In its brief, Askeladden advocates that the Supreme Court should address "the first question presented by the Government and confirm that APJs of the PTAB are merely 'inferior officers' of the U.S. and thus were constitutionally appointed." Askeladden argues that, as a result, the "severance of Title 5 'without cause' rights [would not be] necessary, the prior decisions [could] be reinstated, and any appeals to the Federal Circuit [could] be properly reviewed on the merits."

Askeladden filed the brief as part of its Patent Quality Initiative, which seeks to improve patent quality and promote innovation by challenging poor quality patents, addressing questionable patent practices, and regularly filing amicus briefs in cases concerning important issues of patent law.

Askeladden is represented by Amster Rothstein & Ebenstein LLP.

### **About the Patent Quality Initiative**

Askeladden is an education, information and advocacy organization with the goal of improving the understanding, use and reliability of patents in financial services and other industries. As

part of its Patent Quality Initiative, Askeladden strives to promote better patents and patent holder behaviors by regularly filing amicus briefs, Inter Partes Reviews (IPRs) and engaging in educational activities.