

NOTE: This order is nonprecedential.

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

ALBERTO SOLER-SOMOHANO,
Appellant

v.

THE COCA-COLA COMPANY,
Appellee

2020-1245

Appeal from the United States Patent and Trademark
Office, Trademark Trial and Appeal Board in No.
91232090.

ON MOTION

O R D E R

It appears that Alberto Soler-Somohano submits a motion to vacate and remand this appeal from the Trademark Trial and Appeal Board in light of this court's recent decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Mr. Soler-Somohano also notices the court that he is challenging the Board's decision as rendered by a panel of administrative trademark

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 Mr. Soler-Somohano’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 is due no later than January 27, 2020. Any reply in support of the motion is due no later than February 3, 2020.

(3) The briefing schedule is stayed. *See* Fed. Cir. R. 31(c).

FOR THE COURT

January 17, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court