

NOTE: This order is nonprecedential.

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

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**ALAN STUART, Trustee for the Cecil G. Stuart and  
Donna M. Stuart Revocable Living Trust Agree-  
ment, CDS DEVELOPMENT LLC,**  
*Appellants*

v.

**RPM INTERNATIONAL, INC., RUST-OLEUM  
CORPORATION,**  
*Cross-Appellants*

**ANDREI IANCU, Director, U.S. Patent and Trade-  
mark Office,**  
*Intervenor*

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2019-1994, -2238

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Appeals from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. IPR2017-  
02158.

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**ON MOTION**

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Before MOORE, O'MALLEY, and STOLL, *Circuit Judges*.  
O'MALLEY, *Circuit Judge*.

**ORDER**

Appellants move to vacate the final written decision of the Patent Trial and Appeal Board and remand for further proceedings in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Cross-Appellants oppose the motion and move for a stay. The Director of the United States Patent and Trademark Office intervenes and requests that the court hold any decision on the motion in abeyance pending en banc consideration of *Arthrex*.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Director of the United States Patent and Trademark Office is added as an intervenor. The revised official caption is reflected above.

(2) Appellants' motion to vacate and remand is granted. The Patent Trial and Appeal Board's decision is vacated, and the case is remanded to the Board for proceedings consistent with this court's decision in *Arthrex*.

(3) The motion to stay is denied.

(4) Each side shall bear its own costs.

FOR THE COURT

January 21, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court