

NOTE: This order is nonprecedential.

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

CONCERT PHARMACEUTICALS, INC.,
Appellant

v.

INCYTE CORPORATION,
Appellee

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

2019-2011

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2017-
01256.

ON MOTION

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

O'MALLEY, *Circuit Judge.*

O R D E R

2 CONCERT PHARMACEUTICALS, INC. v. INCYTE CORPORATION

Concert Pharmaceuticals, Inc. moves to vacate the 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). Incyte Corp. opposes the motion. The Director of the United States Patent and Trademark Office intervenes and opposes.

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) The 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) Each side shall bear its own costs.

FOR THE COURT

January 24, 2020
Date

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

s28