

2019-2277, 2019-2307

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

UNILOC 2017 LLC,

Appellant

v.

GOOGLE LLC,

Appellee

ANDREI IANCU, Undersecretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office,

Intervenor.

Appeals from the United States Patent and Trademark Office, Patent Trial and
Appeal Board in No. IPR2017-01684, IPR2017-01685.

APPELLANT'S MOTION TO STAY APPEAL

Appellant Uniloc 2017 LLC (“Uniloc”) moves under Federal Circuit Rule 27 and Federal Rule of Appellate Procedure 27 to stay or hold in abeyance these appeals pending final resolution of the Supreme Court’s review of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), *denying reh’g en banc*, 953 F.3d 760 (Fed. Cir. 2020), including resolution of Petitions for Writ of Certiorari filed in Supreme Court Case Nos. 19-1204, 19-1434, 19-1452, 19-1458, and 19-1459. Uniloc is simultaneously filing a similar motion in companion Appeal No. 19-2137.

Counsel for Uniloc has conferred with Appellee (“Google”) and Intervenor, Director of the U.S. Patent and Trademark Office (“PTO”). The PTO does not oppose Uniloc’s motion. Uniloc was awaiting Google’s response when this case was calendared for telephonic oral argument. Google has since stated that it is opposed to Uniloc’s motion.

BACKGROUND

These appeals are from a final decision of the Patent Trial & Appeal Board (“Board”) determining claims 1-8, 12, and 18-23 of U.S. Patent No. 7,853,000 (“the ’000 patent”) are unpatentable, and from a final decision of the Board determining claims 1-4, 6-8, 18, 21, and 22 of U.S. Patent No. 7,804,948 (“the ’948 patent”) are unpatentable. The Board’s Final Written Decisions issued on January 14, 2019, prior to this Court’s panel decision in *Arthrex*. The Board also issued decisions denying Uniloc’s requests for rehearing on June 13, 2019 (IPR2017-01684) and June

24, 2019 (IPR2017-01685).

In its opening brief in this consolidated appeal, Uniloc challenges the constitutionality of appointments of Administrative Patent Judges. *See* Uniloc Opening Br. 36-39. Google and the PTO argue that Uniloc forfeited its constitutional challenge by not raising it before the Board in this case. Google Br. 50-52; PTO Br. 4-6. The PTO also argues that if the Court permits Uniloc to raise a challenge to an appointments defect, the Court “should nonetheless defer disposition of this appeal pending resolution of the requests for further review of the *Arthrex* decision.” PTO Br. 7.

Appeals of two other IPR decisions on the '000 and '948 patents were previously remanded to the Board under *Arthrex*. *See Uniloc 2017 LLC v. Cisco Sys., Inc.*, Appeal 18-2431 (Fed. Cir.) (appeal of IPR2017-00058); *Uniloc 2017 LLC v. Cisco Sys., Inc.*, Appeal 19-1064 (Fed. Cir.) (appeal of IPR2017-00198) . The PTAB has since ordered that all such remanded cases will be held in administrative abeyance until the Supreme Court acts on a petition for certiorari or the time for filing such petitions expires. Exhibit A (issued, e.g., as Paper 22 in IPR2017-00058, available in the PTAB’s E2E electronic filing system).

ARGUMENT

Uniloc agrees with the PTO that, in the circumstances of this particular case, it would be most efficient to stay or hold this case in abeyance pending final

resolution of the Supreme Court's review of *Arthrex*. Remand to the PTO may ultimately be unnecessary, and cases that have already been remanded are being held in abeyance pending the Supreme Court's review of *Arthrex*. Accordingly, Uniloc requests that this appeal be stayed pending resolution of the Supreme Court's review of *Arthrex*, including resolution of Petitions for Writ of Certiorari filed in Supreme Court Case Nos. 19-1204, 19-1434, 19-1452, 19-1458, and 19-1459.

Respectfully submitted,

/s/ Jeffrey Stephens
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Uniloc 2017 LLC

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 19-2277, 19-2307

Short Case Caption Uniloc 2017 LLC v. Google LLC

Filing Party/Entity Uniloc 2017 LLC

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 07/22/2020

Signature: /s/ Jeffrey Stephens

Name: Jeffrey Stephens

FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

<p>1. Represented Entities. Fed. Cir. R. 47.4(a)(1).</p>	<p>2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).</p>	<p>3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p>
<p><input type="checkbox"/> None/Not Applicable</p>	<p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p><input type="checkbox"/> None/Not Applicable</p>
<p>Uniloc 2017 LLC</p>		<p>CF Uniloc Holdings LLC</p>

Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

Sean D. Burdick		

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None/Not Applicable Additional pages attached

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

Federal Circuit Appeals involving '000 and '948 patents:

Uniloc 2017 LLC v. Cisco Systems, Inc., Appeal 18-2431 (vacated and remanded Jan. 23, 2020) (appeal from IPR2017-00058 involving Patent 7,804,948)

Uniloc 2017 LLC v. Cisco Systems, Inc., Appeal 19-1064 (vacated and remanded Jan. 23, 2020) (appeal from IPR2017-00198 involving Patent 7,853,000)

District Court cases involving '000 and '948 patents:

Case Filing Date	Case Name	Case Number	Court
12/28/2015	<i>Uniloc USA, Inc. et al v. Avaya Inc.</i>	6-15-cv-01168	EDTX
5/28/2016	<i>Uniloc USA, Inc. et al v. Google LLC</i>	2-16-cv-00566	EDTX
4/4/2017	<i>Uniloc USA, Inc. et al v. Cisco Systems, Inc.</i>	2-17-cv-00527	WDWA
4/21/2017	<i>Uniloc USA, Inc. et al v. Kik Interactive, Inc.</i>	2-17-cv-00346	EDTX
4/25/2017	<i>Uniloc USA, Inc. et al v. RingCentral, Inc.</i>	2-17-cv-00354	EDTX
4/25/2017	<i>Uniloc USA, Inc. et al v. RingCentral, Inc.</i>	2-17-cv-00355	EDTX

Cases involving related U.S. Patent No. 8,571,194:

Case Name	Case Number	Court
<i>Uniloc 2017 LLC v. Facebook, Inc.</i>	18-2251	CAFC
<i>Uniloc 2017 LLC v. Google LLC</i>	19-2137	CAFC
<i>Uniloc USA, Inc. et al v. Avaya Inc.</i>	6-15-cv-01168	TXED
<i>Uniloc USA, Inc. et al v. Facebook, Inc.</i>	6-16-cv-00223	TXED
<i>Uniloc USA, Inc. et al v. WhatsApp Inc.</i>	6-16-cv-00225	TXED

<i>Uniloc USA, Inc. et al v. Google LLC</i>	2-16-cv-00566	TXED
<i>Uniloc USA, Inc. et al v. Cisco Systems, Inc.</i>	2-17-cv-00527	WAWD
<i>Uniloc USA, Inc. et al v. Kik Interactive, Inc.</i>	2-17-cv-00346	TXED
<i>Uniloc USA, Inc. et al v. RingCentral, Inc.</i>	2-17-cv-00354	TXED
<i>Uniloc USA, Inc. et al v. RingCentral, Inc.</i>	2-17-cv-00355	TXED

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2). The motion contains 531 words, excluding the portions exempted by Federal Circuit Rule 27(d).

2. This motion complies with the typeface and type style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word and 14-point Times New Roman type.

Dated: July 22, 2020

/s/ Jeffrey Stephens
Jeffrey Stephens

Exhibit A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
PATENT TRIAL AND APPEAL BOARD

GENERAL ORDER IN CASES REMANDED UNDER
ARTHREX, INC. V. SMITH & NEPHEW, INC.,
941 F.3D 1320 (FED. CIR. 2019)

GENERAL ORDER

Before SCOTT R. BOALICK, *Chief Administrative Patent Judge*.

BOALICK, *Chief Administrative Patent Judge*.

The United States Patent and Trademark Office (“Office”) has received from the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) numerous Orders that rely on the Federal Circuit’s decision in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). Those Orders have already vacated more than 100 decisions by the Patent Trial and Appeal Board (“Board”), and more such Orders are expected. The Orders instruct the Board to conduct further proceedings on remand before newly-designated Board panels.

Several parties in Board matters that have been subject to such Orders have informed the Office that they intend to seek review of the pertinent Order by the Supreme Court of the United States (“Supreme Court”). Meanwhile, in accordance with the Board’s Standard Operating Procedure 9 (“SOP 9”), parties are contacting the Board to schedule teleconferences with the appropriate Board panel in their proceeding. To avoid burdening the

General Order Regarding *Arthrex*-Related Remands

Office and the parties until all appellate rights have been exhausted, I exercise my discretion to: (1) suspend the requirements in SOP 9 in cases remanded by the Federal Circuit under *Arthrex*; and (2) hold all such cases in administrative abeyance until the Supreme Court acts on a petition for certiorari or the time for filing such petitions expires.

ORDER

It is therefore ORDERED that the following matters are held in abeyance:

1. App. Ser. No. 95/001,679
2. App. Ser. No. 95/001,754
3. App. Ser. No. 95/001,792
4. App. Ser. No. 95/001,851
5. CBM2017-00064
6. CBM2017-00065
7. CBM2017-00066
8. CBM2017-00067
9. CBM2018-00034
10. IPR2014-01235
11. IPR2015-00249
12. IPR2015-01046
13. IPR2015-01047
14. IPR2016-00693
15. IPR2016-00957
16. IPR2016-01542
17. IPR2016-01621
18. IPR2016-01622

General Order Regarding *Arthrex*-Related Remands

19. IPR2016-01756
20. IPR2017-01218
21. IPR2017-00058
22. IPR2017-00116
23. IPR2017-00198
24. IPR2017-00275
25. IPR2017-00350
26. IPR2017-00351
27. IPR2017-00352
28. IPR2017-00353
29. IPR2017-00524
30. IPR2017-00901
31. IPR2017-00950
32. IPR2017-00951
33. IPR2017-00952
34. IPR2017-01048
35. IPR2017-01049
36. IPR2017-01050
37. IPR2017-01256
38. IPR2017-01391
39. IPR2017-01392
40. IPR2017-01393
41. IPR2017-01405
42. IPR2017-01406
43. IPR2017-01409
44. IPR2017-01410

General Order Regarding *Arthrex*-Related Remands

45. IPR2017-01500
46. IPR2017-01707
47. IPR2017-01714
48. IPR2017-01735
49. IPR2017-01736
50. IPR2017-01737
51. IPR2017-01797
52. IPR2017-01798
53. IPR2017-01799
54. IPR2017-01800
55. IPR2017-01801
56. IPR2017-01802
57. IPR2017-01919
58. IPR2017-02131
59. IPR2017-02132
60. IPR2017-02136
61. IPR2017-02138
62. IPR2017-02158
63. IPR2018-00522
64. IPR2018-00864
65. IPR2018-00044
66. IPR2018-00187
67. IPR2018-00200
68. IPR2018-00205
69. IPR2018-00206
70. IPR2018-00207

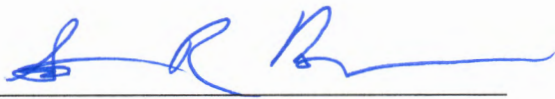
General Order Regarding *Arthrex*-Related Remands

71. IPR2018-00208
72. IPR2018-00272
73. IPR2018-00312
74. IPR2018-00329
75. IPR2018-00333
76. IPR2018-00336
77. IPR2018-00338
78. IPR2018-00339
79. IPR2018-00342
80. IPR2018-00343
81. IPR2018-00369
82. IPR2018-00374
83. IPR2018-00375
84. IPR2018-00404
85. IPR2018-00458
86. IPR2018-00486
87. IPR2018-00529
88. IPR2018-00571
89. IPR2018-00599
90. IPR2018-00680
91. IPR2018-00870
92. IPR2018-00871
93. IPR2018-00872
94. IPR2018-00873
95. IPR2018-00874
96. IPR2018-00875

General Order Regarding *Arthrex*-Related Remands

- 97. IPR2018-00998
- 98. IPR2018-00999
- 99. IPR2018-01000
- 100. IPR2018-01004
- 101. IPR2018-01005
- 102. IPR2018-01066
- 103. IPR2018-01205

It is further ORDERED that any other matters remanded by the Federal Circuit under *Arthrex* will be held in abeyance.



Scott R. Boalick
Chief Administrative Patent Judge