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## Supreme Court Clears Arthrex Docket With Mixed Rulings

By **Dani Kass**

Law360 (June 28, 2021, 8:38 PM EDT) -- The U.S. Supreme Court on Monday made quick work of the eight Arthrex-adjacent cases on its docket, denying half the petitions while granting the rest and vacating their underlying decisions.



Following its ruling last week in *U.S. v. Arthrex*, the Supreme Court on Monday cleared eight adjacent cases from its docket. (AP Photo/Mark Tenally)

The orders follow the justices' **June 21 decision** in *U.S. v. Arthrex*, which held that Patent Trial and Appeal Board judges were unconstitutionally appointed. These were the **last of the cases** where those appointments clause concerns had been raised at the Federal Circuit before making their way up to the Supreme Court.

The Federal Circuit in *Arthrex* had found that PTAB judges were **wrongly appointed** and that removing tenure protections would fix that error. The Supreme Court altered that remedy, instead holding that the USPTO's director should have the unilateral ability to review the judges' decisions.

On Monday, the justices granted the petitions in *Polaris Innovations v. Kingston Technology*, *Iancu v. Luoma*, *RPM International v. Stuart* and *Iancu v. Fall Line Patents*, and summarily vacated the underlying decisions and remanded them to the Federal Circuit. The Supreme Court noted that Justice Samuel Alito stayed out of the *Fall Line* decision.

Polaris Innovations' case had closely tracked *Arthrex* through the courts, and they were combined at one point by the Supreme Court before certiorari was granted in *Arthrex*. In it, Polaris' WiLAN unit had its computer networking patent invalidated by the PTAB in a dispute with Kingston Technologies.

On appeal, the Federal Circuit vacated and remanded that ruling based on *Arthrex*. Polaris then told the justices in June 2020 that a **bigger remedy was needed** than what the Federal Circuit provided.

The next decision was a massive **consolidated appeal** from the government, which had asked the justices in July to look into 39 orders in about 80 cases where *Arthrex* remands were granted. Those included a case featuring inventor Eugene Luoma, whose hair removal patent was invalidated in an inter partes reexamination.

The justices also vacated and remanded RPM International Inc.'s September petition. The company had successfully challenged a patent covering a way to clean vinyl siding owned by Alan Stuart — trustee for the Cecil G. Stuart and Donna M. Stuart Revocable Living Trust Agreement — and CDS Development LLC. However, that invalidation was **vacated and remanded** by the Federal Circuit.

Lastly, the Supreme Court vacated and remanded the government's December appeal of Federal Circuit cases with parties including Fall Line Patents LLC, James Gelsin Marx, HemoSonics LLC and Apple Inc. In each of those cases, the Federal Circuit vacated and remanded a PTAB decision based on Arthrex.

Meanwhile, two of the petitions rejected on Monday were Comcast's cross-appeal of one of these orders in a case with Promptu Systems, as well as Vilox Technologies appeal of its own order.

The final two denied petitions were one filed by Rovi Corp. in September as part of a dispute with Comcast, and one filed by Micron Technology in November in a dispute with North Star, which had its semiconductor patent claims invalidated in Micron's challenge before getting remanded under Arthrex.

A representative for the USPTO, along with counsel for Comcast, RPM and HemoSonics, declined to comment. Counsel for the remaining parties didn't immediately respond to requests for comment Monday.

The government is represented by the solicitor general's office, the U.S. Department of Justice's Civil Division and the U.S. Patent and Trademark Office.

Polaris is represented by Tensegrity Law Group LLP.

Comcast is represented by Gibson Dunn & Crutcher LLP, Farella Braun & Martel LLP, and Munger Tolles & Olson LLP.

Vilox is represented by Flachsbart & Greenspoon LLC.

Luoma is representing himself.

Rovi is represented by Sterne Kessler Goldstein & Fox PLLC.

RPM is represented by McDonnell Boehnen Hulbert & Berghoff LLP.

Stuart is represented by Kasowitz Benson Torres LLP.

Micron is represented by Orrick Herrington & Sutcliffe LLP.

North Star is represented by Eckert Seamans Cherin & Mellott LLC.

Fall Line is represented by Antonelli Harrington & Thompson LLP.

Marx is represented by Knobbe Martens Olson & Bear LLP.

HemoSonics is represented by Mayer Brown LLP.

Apple is represented by WilmerHale.

The granted cases are Polaris Innovations Ltd. v. Kingston Technology Co. Inc. et al., case number 19-1459, Iancu v. Luoma et al., case number 20-853, RPM International Inc. et al. v. Stuart et al., case number 20-314, and Iancu v. Fall Line Patents LLC et al., case number 20-853, before the Supreme Court of the United States.

The denied cases are Comcast Cable Communications LLC v. Promptu Systems Corp. et al., case number 20-92, Vilox Technologies LLC v. Iancu, case number 20-271, Rovi Guides Inc. v. Comcast Cable Communications LLC et al., case number 20-414, and Micron Technology Inc. v. North Star Innovations Inc., case number 20-679, before the Supreme Court of the United States.

--Editing by Adam LoBelia.

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