

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

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**VIRNETX INC.,**  
*Appellant*

v.

**CISCO SYSTEMS, INC.,**  
*Appellee*

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

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2019-1671

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Appeal from the United States Patent and Trademark  
Office, Patent Trial and Appeal Board in No. 95/001,679.

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## ON MOTION

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

## O R D E R

VirnetX 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). Cisco Systems, Inc. opposes the motion. The Director of the United States Patent and Trademark Office intervenes and opposes.

Although this appeal arises out of an *inter partes* reexamination and not an *inter partes* review as was at issue in *Arthrex*, we see no material difference in the relevant analysis. We therefore grant VirnetX's motion.

Accordingly,

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) VirnetX's 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

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