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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SMITH & NEPHEW, INC. &  
ARTHROCARE CORP.,  
Petitioners

v.

ARTHREX, INC.,  
Patent Owner.

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Case IPR2016-00918  
Patent 8,821,541

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**PATENT OWNER'S NOTICE OF APPEAL**

Patent Owner, Arthrex, Inc. (“Arthrex”) hereby gives notice to the Patent Trial and Appeal Board (“the Board”) and the Director of the Patent and Trademark Office, pursuant to 35 U.S.C. §§ 141 and 142 and 37 C.F.R. § 90.2 and 90.3, of Patent Owner’s appeal pursuant to 35 U.S.C. § 319 to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on October 16, 2017 (Paper 42) (the “Final Written Decision”), and from all orders, decisions, rulings, and opinions underlying the Final Written Decision and the Decision on Request for Rehearing entered on December 15, 2017 (Paper 44) (the “Decision on Request for Rehearing”).

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Arthrex further indicates that the issues on appeal include, but are not limited to, the Board’s claim construction, the Board’s decision to find claims 10 and 11 obvious over US Pub. No. 2006/0271060 in view of U.S. Patent No. 7,322,978, the Board’s decision to find claim 11 anticipated by U.S. Patent No. 5,464,427, the Board’s decision to find claim 10 obvious over U.S. Patent No. 5,464,427 in view of U.S. Pub. No. 2003/0187444 and U.S. Patent No. 5,690,676, whether *inter partes* review, an adversarial process used by the Patent and Trademark Office (PTO) to analyze the validity of existing patents, violates the Constitution by extinguishing property rights through a non-Article III forum without a jury and without affording due process to patent owners, an issue currently under consideration by the United States Supreme Court in *Oil*

*States Energy Services, LLC v. Greene's Energy Group, LLC*, No. 16-712 (U.S. Nov. 27, 2017), whether the PTO has exceeded its statutory authority under 35 U.S.C. § 314, and whether the PTO violated the Administrative Procedures Act (APA) and due process.

This Notice of Appeal is timely filed with the Director. 37 C.F.R. 90.3. Simultaneously with this submission, a copy of this Notice of Appeal is being filed with the Board. In addition, a copy of this Notice of Appeal, along with the required docketing fees, is being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit. Patent Owner is also forwarding copies of the Board's Final Written Decision dated October 16, 2017 to the Clerk of the Federal Circuit.

Dated: February 14, 2018

Respectfully Submitted,

**CARLSON, GASKEY & OLDS, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board End to End system (“PTAB E2E”), the original version of the foregoing, PATENT OWNER’S NOTICE OF APPEAL, was filed by Express Mail (Express Mail Label EV333691987US) on this 14 day of February, 2018, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office  
c/o Office of the General Counsel  
P.O. Box 1450  
Alexandria, VA 22313-1450

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing, PATENT OWNER’S NOTICE OF APPEAL, was filed electronically on the 14<sup>th</sup> day of February, 2018, with the Clerk’s Office of the United States Court of Appeals for the Federal Circuit:

Clerk of the Court  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, N.W.  
Washington, D.C. 20439

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing, PATENT OWNER'S NOTICE OF APPEAL, was served by electronic mail on this 14<sup>th</sup> day of February, 2018, on the following counsel of record for Petitioners SMITH & NEPHEW, INC. AND ARTHROCARE CORP.:

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Petitioners have consented to electronic service.

Date: February 14, 2018

/Jessica Zilberberg/