

NOTE: This order is nonprecedential.

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

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**GENENTECH, INC.,**  
*Appellant*

v.

**HOSPIRA, INC.,**  
*Appellee*

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2018-1959

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Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2016-01771.

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**O R D E R**

The appellant notifies the court that in this appeal, it is challenging the constitutionality of retroactively applying inter partes review to a patent issued prior to the enactment of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011).

Upon notice of the fact that “a party questions the constitutionality of an Act of Congress in a proceeding in which the United States . . . is not a party,” the clerk of this court must “certify that fact to the Attorney General.” Fed. R. App. P. 44(a); *see also* 28 U.S.C. § 2403(a) (“In any action . . . in a court of the United States to which the

United States . . . is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene . . . for argument on the question of constitutionality.”).

Upon consideration thereof,

IT IS ORDERED THAT:

(1) Notice of the appellant’s constitutional challenge is hereby certified to the Attorney General.

(2) No later than 30 days from the date of filing of this order, the Attorney General is directed to inform this court whether the United States intends to intervene in this appeal.

(3) The proceedings in the above-captioned appeal are stayed.

FOR THE COURT

Aug 28, 2018  
Date

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

cc: United States Attorney General

s25