

NOTE: This order is nonprecedential.

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

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**ABBVIE BIOTECHNOLOGY, LTD.,**  
*Appellant*

v.

**COHERUS BIOSCIENCES INC.,**  
*Appellee*

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2017-2304, -2305, -2306

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Appeals from the United States Patent and Trade-  
mark Office, Patent Trial and Appeal Board in Nos.  
IPR2016-00172, IPR2016-00188, and IPR2016-00189.

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**ABBVIE BIOTECHNOLOGY, LTD.,**  
*Appellant*

v.

**BOEHRINGER INGELHEIM INTERNATIONAL  
GMBH, BOEHRINGER INGELHEIM  
PHARMACEUTICALS, INC.,**  
*Appellees*

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2017-2362, -2363

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2016-00408 and IPR2016-00409.

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Before TARANTO, *Circuit Judge*.

**ORDER**

In these fully-briefed consolidated appeals, AbbVie Biotechnology, Ltd. notifies the court that it challenges the constitutionality of the application of the America Invents Act in these cases.

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 into 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) The proceedings in the above-captioned appeals are stayed.
- (2) Notice of AbbVie’s constitutional challenge is hereby certified to the Attorney General.
- (3) 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 these appeals.

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(4) If the United States elects to intervene in these appeals, the stay will be lifted, AbbVie's reply brief will be stucken, the United States's response brief will be due no later than 40 days from the date of filing of the United States's election to intervene, and AbbVie's replacement reply brief will be due no later than 14 days after service of the United States's response brief.

(5) If the United States elects not to intervene, the stay will be lifted and these appeals will proceed in the regular course.

FOR THE COURT

Oct. 31, 2018  
Date

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

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cc: United States Attorney General