

NOTE: This order is nonprecedential.

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

BIAGEN, INC.,
Appellant

v.

PFIZER, INC.,
Appellee

2019-1364

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2017-01168.

O R D E R

The appellant notifies the court that in this appeal it intends to challenge the constitutionality of *inter partes* review as provided by the America Invents Act.

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 40 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.

FOR THE COURT

Jan 10 , 2019

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court