

## Joe Matal Discusses Post-Arthrex Authority With World IP Review

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September 22, 2021

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**PRACTICES** Patent Office Trials, Intellectual Property

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Haynes Boone Partner Joseph Matal talked with *World IP Review* about the continued need for Patent Trial and Appeal Board (PTAB) review in certain patent dispute cases.

Below is an excerpt:

The landmark decision of *U.S. v. Arthrex* (2021) finally addressed the thorny and hotly debated question of whether the Patent Trial and Appeal Board (PTAB) judges were constitutionally appointed.

In June, the Supreme Court of the U.S. (SCOTUS) dictated that their appointments were unconstitutional, and handed power to the USPTO director to assess *inter partes* review (IPR) decisions.

The ruling led to worries in patenting circles over its political ramifications. The concern is that, as the director is a political appointee, he or she may be politically motivated to cancel patents that carry with them significant financial or social consequences. ...

... Joseph Matal, a partner in the IP practice group of Haynes Boone in Washington, DC, noted that in the pre-Arthrex era, few rehearing requests identified a clear “misapprehension” by the board or an issue that is worthy of the director’s attention.

“That is likely to be just as true of requests for director-only review,” he said, adding: “It is unsurprising that Hirshfeld is denying the petitions that have been filed. Indeed, given that director-only review will probably only be used for policymaking rather than for error correction, I would be surprised if he felt compelled to grant any petitions while he serves in his present role.” ...

... Matal said it was unsurprising that Google and Solas OLED met with little success as in both cases, the PTAB decisions were “thoroughly reasoned and were written by some of the board’s most highly respected judges.”

“These decisions, frankly, show why you need a PTAB review in these cases,” argued Matal.

“It’s unlikely that a jury would have understood even the background technology of AMOLED displays, much less have been willing to grapple with the technical questions raised by whether the claimed features were obvious,” he contended.

To read the full article, click [here](#).