O'Brien in Bloomberg Law: New Patent Tribunal Rule Marks Push to Curb Political Influence

By David W. O'Brien | October 16, 2023

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Haynes Boone Partner David O'Brien was quoted in a *Bloomberg Law* article on the US Patent Office's proposal to eliminate senior leadership's involvement in administrative tribunal decisions before they're issued.

Read an excerpt below:

This proposed rule underscores the "tension between the instinct for an independent judiciary" and the Supreme Court's "requirement that decisions of the patent office ultimately be subject to political control," said attorney David O'Brien, a Haynes & Boone LLP partner. He referenced the high court's 2021 Arthrex decision that gave the patent office director the power to overturn PTAB decisions.

The rulemaking and the PTO's new standard operating procedure "attempt to strike that balance" of isolating the judicial panels from influence and acknowledging that the political process has to be accountable for panel decisions, O'Brien said.

"It is an attempt to deal with the structural concerns that maybe a director might feel inclined to manipulate panels pre-decision to seek a policy outcome without notice and comment rulemaking," O'Brien said. It would also push back against allegations of an unwritten understanding among administrative patent judges that "if you go this way, the director is not going to like that and you're going to have some problems around here."

To read the full article from *Bloomberg Law*, click here.

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