

David O'Brien in Bloomberg Law: Fed. Cir. Judges Question Parts of PTAB Appointment Decision

November 8, 2019 David O'Brien

PRACTICES Patent Office Trials, Patents, Intellectual Property

Bloomberg Law quoted Haynes Boone Partner [David O'Brien](#) in an article about Federal Circuit Judge Timothy B. Dyk's decision that new Patent Trial and Appeal Board hearings shouldn't be required after the court decided that PTAB judges were appointed unconstitutionally.

Here is an excerpt:

The court's decision in *Arthrex Inc. v. Smith & Nephew Inc.* "imposes large and unnecessary burdens on the system of *inter partes* review, requiring potentially hundreds of new proceedings, and involves unconstitutional prospective decision-making," Dyk wrote Nov. 7 in a concurrence with a decision granting bedding company Bedgear's request to cancel several PTAB decisions.

Yet how many parties will use Arthrex to get cases kicked back to the PTAB for a redo is still an open question.

Something "nobody knows is how many litigants, after letting the dust settle, are going to think it'll be such a great thing to go back and do another hearing before a different panel on the same record," David O'Brien, leader of Haynes Boone LLP's patent office trials practice group, said.

"If you lost, perhaps all that will happen is you'll lose again," he said.

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