Eugene Goryunov, David McCombs, and Jonathan Bowser in Reuters: 'IPR Tricks of Trade: Director Review of Patent Decisions after Arthrex'

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July 15, 2021 - In *United States v. Arthrex Inc*, the U.S. Supreme Court found that the Patent Trial and Appeal Board's Administrative Patent Judges (APJs) operated as principal officers because they enjoyed "unreviewable authority" to issue decisions on behalf of the U.S. Patent and Trademark Office (USPTO). As APJs were not principal officers — because they were not nominated by the President and confirmed by the Senate — the Court found that the APJs were unconstitutionally appointed. 141 S.Ct. 1970 (2021).

The Court remedied the constitutional infirmity by severing a portion of 35 U.S.C. § 6(c) that limited decisions on rehearing requests to the PTAB, i.e., the APJs. Id. at 1987 (severing part of 35 U.S.C. § 6(c) which provided that "[o]nly the Patent Trial and Appeal Board may grant rehearings.").

Put another way, as a result of *Arthrex*, decisions by the APJs are now reviewable by the USPTO Director, a principal officer. This remedy is different from that previously crafted by the U.S. Court of Appeals for the Federal Circuit and has additional implications for PTAB trial practice.

Excerpted from *Reuters*. To read the full article, click here.

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