

Eugene Goryunov, David McCombs, Jonathan Bowser Author Reuters IPR Tricks of Trade: USPTO Director's Changes to PTAB Review Procedures

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Kathi Vidal was sworn in as the Director of the U.S. Patent and Trademark Office (USPTO) on April 13, 2022. In her brief tenure, Vidal has already implemented policy changes aimed at increasing transparency at the Patent Trial and Appeal Board (PTAB).

The amount of authority the USPTO Director has to impact the PTAB's decisions has been a hot topic for Congress, the courts, and practitioners in recent years. In *United States v. Arthrex, Inc.*, the Supreme Court held that the PTAB's Administrative Patent Judges (APJs) were unconstitutionally acting as principal officers, rather than inferior officers, because APJs were issuing final decisions that were unreviewable by the Director. (141 S.Ct. 1970 (2021)).

Before the Court issued its decision in *Arthrex*, several members of Congress requested the Government Accountability Office to conduct an investigation into the degree of control the Director held, in response to arguments made by the U.S. government in *Arthrex* briefing. According to the Congress members' letter, the government argued that APJs are inferior officers, rather than principal officers, because APJs "are subject to significant oversight and control by the Director of the USPTO."

This oversight includes, the letter continues, "the ability of the Director to dictate the outcome of PTAB cases by controlling which APJs decide which cases...and by providing policy directives that APJs are obligated to follow." While the Court ultimately disagreed with the government, concern remained over the extent of control the Director had to impact PTAB decisions.

Excerpted from *Reuters*. To read the full article, click [here](#).