

# Supreme Court Justices Add More Oversight To PTAB In Arthrex Ruling

By [Dani Kass](#)

Law360 (June 21, 2021, 10:45 AM EDT) -- The U.S. Supreme Court on Monday held that Patent Trial and Appeal Board judges are unconstitutionally appointed but that giving the U.S. Patent and Trademark Office's director more control over their rulings will fix the problem.

The court's opinion, written by Chief Justice John Roberts, severed the section of the Patent Act that made PTAB decisions reviewable only by a panel of judges and instead gave the director single-handed authority to reverse panel rulings.

"The structure of the PTO and the governing constitutional principles chart a clear course: decisions by APJs must be subject to review by the director," the chief justice wrote.

There were three other opinions issued by his colleagues, dissenting in part or whole.

The [dispute](#) in U.S. v. Arthrex was over whether administrative patent judges are "principal" officers of the government, who must be appointed by the president and confirmed by the Senate under the appointments clause, or "inferior" officers, who can be appointed by heads of departments.

The Federal Circuit had said administrative patent judges were improperly appointed but that severing job protections would fix the issue. The government and medical device maker Smith & Nephew had said the PTAB judges were properly appointed. Rival device maker Arthrex had argued that they were improperly appointed but that Congress should be the one to craft a remedy.

The Supreme Court vacated the Federal Circuit's ruling and remanded the case to the USPTO's acting director to decide whether to review the underlying PTAB dispute.

The government is represented by Deputy Solicitor General Malcolm L. Stewart.

Smith & Nephew is represented by Mark A. Perry of Gibson Dunn & Crutcher LLP.

Arthrex is represented by Jeffrey A. Lamken of MoloLamken LLP.

The cases are U.S. v. Arthrex, case number [19-1434](#); Smith & Nephew v. Arthrex, case number [19-1452](#); and Arthrex v. Smith & Nephew, case number [19-1458](#), in the Supreme Court of the United States.

--Editing by Orlando Lorenzo.