

Insights

CLARK AUTHORS ARTICLE IN 'LAW JOURNAL NEWSLETTERS' ON IMPLICATIONS OF 'ARTHREX'

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St. Louis Senior Trial Counsel Ben Clark authored an article published in the April edition of *Law Journal Newsletters* regarding *United States v. Arthrex, Inc.*, a case currently before the U.S. Supreme Court which considers whether administrative judges of the United States Patent and Trademark Office's (USPTO) Patent Trial and Appeal Board (PTAB) have been appointed unconstitutionally under the America Invents Act. "At argument, a majority of the justices appeared to question the constitutionality of APJ appointments, but toiled in search of a remedy. This was in apparent recognition of the reality that simply striking down the appointment procedure would throw the patent system into at least temporary chaos," Clark wrote. "The PTAB panels, dubbed as 'patent death squads' per remarks of former Federal Circuit Chief Judge Randall Rader, have invalidated more than 2,000 patents since beginning their work in 2012, though that trend has lessened in recent years. Underlying this discussion is the oft-present question of whether and to what extent the Court should effectively send a matter back to Congress by declining to take affirmative measures by, for instance, striking portions of an offending statute; or, conversely, itself revising the statute in order to meet constitutional standards."

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J. Bennett Clark

St. Louis

ben.clark@bclplaw.com

+1 314 259 2418

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