

## Intellectual Property & Technology



MAY 5, 2020 • NO. 8

### **PTAB Administratively Holds in Abeyance More Than 100 Cases Remanded Due to *Arthrex, Inc. v. Smith & Nephew, Inc.***

---

On May 1, 2020, the Chief Administrative Patent Judge for the Patent Trial and Appeal Board (“PTAB”) issued a [General Order](#) administratively holding in abeyance all cases remanded from the United States Court of Appeals for the Federal Circuit for a new hearing before a new panel in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). In *Arthrex*, the Federal Circuit found the appointment of Administrative Patent Judges (“APJs”) violated the Appointments Clause of the Constitution, severed the portion of the Patent Act restricting removal of APJs, vacated the Final Written Decision, and remanded for a new hearing before a new panel that is constitutionally appointed. The General Order noted that since *Arthrex* was decided in October 2019, more than 100 other PTAB decisions have been vacated and more are expected. Rather than begin new hearings for each of the remanded cases now, the PTAB is instead electing to wait and see whether the Supreme Court takes up the issue. If the Supreme Court grants certiorari in an appeal stemming from *Arthrex*, the PTAB will wait to see how the Court handles it. If the time for filing cert expires, or certiorari is denied, the PTAB will likely lift the stay and proceed with the new hearings. In light of the General Order, parties involved in matters remanded to the PTAB due to *Arthrex* need not move to stay those proceedings until further notice from the PTAB.

**For additional information, please contact:**

**Salvatore P. Tamburo, Washington, D.C. Office**  
**Partner, Intellectual Property & Technology**  
**202.420.5164 | [stamburo@blankrome.com](mailto:stamburo@blankrome.com)**