

PTAB Orders All Cases Remanded in Light of *Arthrex* Held in Abeyance

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Earlier this month, the Chief Administrative Patent Judge issued a [general order](#) holding in abeyance all cases remanded in light of *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). As we [previously covered](#), on October 31, 2019, the Federal Circuit held in *Arthrex, Inc. v. Smith & Nephew, Inc.*, [941 F.3d 1320](#), that PTAB judges (i.e., administrative patent judges, or APJs) were principal officers appointed in violation of the Constitution, and held that the proper remedy was to judicially eliminate their for-cause removal protections. The Federal Circuit subsequently, on March 23, 2020, [denied](#) the parties' petitions for rehearing *en banc*.

In light of the sweeping nature of *Arthrex*, the Federal Circuit has already vacated more than 100 PTAB decisions “and more such Orders are expected.” Further, several parties have informed the PTAB that they intend to petition the Supreme Court of the United States for a writ of certiorari.

To avoid unnecessarily burdening the PTAB should the Supreme Court grant such a petition, the general order holds “all such cases in administrative abeyance until the Supreme Court acts on a petition for certiorari or the time for filing such petitions expires.” As a result, in all likelihood any case remanded in light of *Arthrex* will not be acted upon by the PTAB until 2021 at the earliest.

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National Law Review, Volume X, Number 141

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