



Charles R. Macedo, David Goldberg and Chandler Sturm Co-Author Law360 Expert Analysis on Why the Supreme Court Should Review the Arthrex Case

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In this Law360 Expert Opinion column, "[High Court Should Review Arthrex Case](#)," Charley Macedo, David Goldberg and Chandler Sturm explore the implications of the October 31, 2019 decision in *Arthrex Inc. v. Smith & Nephew Inc.*, in which a three-judge panel of the U.S. Court of Appeals for the Federal Circuit took the remarkable step of declaring that the Patent Act as currently constructed renders administrative patent judges principal officers who were appointed in violation of the appointments clause of the U.S. Constitution.

[As the authors note](#), "to remedy this constitutional defect, the panel severed the portion of the Patent Act restricting removal of the administrative patent judges only for cause, thus purportedly rendering APJs inferior officers going forward and remedying the constitutional appointment problem. Since the decision, the Federal Circuit has applied *Arthrex* in over 100 cases.

On June 25, the government filed a petition for certiorari to the U.S. Supreme Court seeking review of *Arthrex* and *Polaris*. In *U.S. v. Arthrex*, the government is asking the Supreme Court to consider whether administrative patent judges for the PTAB were constitutionally appointed under the appointments clause. *Askeladden LLC* and the New York Intellectual Property Law Association have supported the government's petition to take this threshold issue up to the Supreme Court.

[Read the full article](#) (subscription required).

James Howard, vice president and associate general counsel at The Clearinghouse Payments Company LLC and associate general counsel for *Askeladden*, contributed to this article.

Note: Charley was principal counsel, and David and Chandler were counsel on an amicus brief submitted to the Supreme Court on behalf of Askeladden on July 29 in support of the court's accepting question one of the U.S. government's combined petition for a writ of certiorari in U.S. v. Arthrex.

