



# USPTO implementation of an interim Director review process following *Arthrex*

This webpage houses useful information regarding the implementation of an interim Director review process in Patent Trial and Appeal Board (PTAB) proceedings following *Arthrex*.

## Background

On June 21, 2021, the U.S. Supreme Court issued a decision in *United States v. Arthrex, Inc.*, Nos. 19-1434, 19-1452, 19-1458, 2021 WL 2519433, addressing the Constitution's appointments clause as it relates to PTAB administrative patent judges (APJs). The court considered whether APJs are "principal officers" who must be appointed by the President with the Senate's advice and consent, or, as the United States Patent and Trademark Office (USPTO) and the U.S. government argued, whether they are "inferior officers" who can be appointed by the Secretary of Commerce.

## Key takeaways of *Arthrex* decision

In its decision, the Supreme Court provided a new, tailored remedy to ensure that APJs function as inferior officers. Specifically, the court held "that 35 U.S.C. § 6(c) is unenforceable as applied to the Director insofar as it prevents the Director from reviewing the decisions of the PTAB on his own. The Director may engage in such review and reach his own decision." Thus, *Arthrex* provides the Director authority to unilaterally review a PTAB final decision in an inter partes review by rehearing.

## Interim process for Director review following *Arthrex*

The Office has implemented an interim procedure for a Director review, consistent with the *Arthrex* decision. In this interim procedure, such a review may be initiated sua sponte by the Director or requested by a party to a PTAB proceeding. Parties may request Director review of a final written decision in an inter partes review or a post-grant review by concurrently (1) entering a Request for Rehearing by the Director into PTAB E2E and (2) submitting a notification of the Request for Rehearing by the Director to the Office by email to [Director\\_PTABDecision\\_Review@uspto.gov](mailto:Director_PTABDecision_Review@uspto.gov) ([mailto:Director\\_PTABDecision\\_Review@uspto.gov](mailto:Director_PTABDecision_Review@uspto.gov)), copying counsel for all parties by email.

For more details on the interim Director review process, please see [Arthrex Q&As \(/patents/patent-trial-and-appeal-board/procedures/arthrex-qas\)](/patents/patent-trial-and-appeal-board/procedures/arthrex-qas).

## Other information regarding the interim Director review process

The PTAB is hosting a "[Boardside Chat](/about-us/events/learn-about-interim-director-review-process-following-us-v-arthrex-inc)" webinar (</about-us/events/learn-about-interim-director-review-process-following-us-v-arthrex-inc>) on Thursday, July 1, 2021, at 10 am ET to discuss the *Arthrex* decision, explain the interim procedure for Director review of PTAB decisions, and answer questions.

If parties have any questions about the impact of the *Arthrex* decision on PTAB proceedings, the parties may contact the Board at [trials@uspto.gov](mailto:trials@uspto.gov) (<mailto:Trials@uspto.gov>).

The USPTO also seeks feedback on the interim Director review process. Suggestions are welcome and may be submitted to [Director\\_Review\\_Suggestions@uspto.gov](mailto:Director_Review_Suggestions@uspto.gov) ([mailto:Director\\_Review\\_Suggestions@uspto.gov](mailto:Director_Review_Suggestions@uspto.gov)).

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