

No Easy Arthrex Fix as Full-Court Review Looms, Attorneys Say

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Kia L. Freeman

In *Arthrex v. Smith & Nephew Inc.*, the Federal Circuit recently ruled that administrative patent judges have been unconstitutionally appointed—calling the decisions by those judges into question. The ruling launched several constitutional challenges to overturn Patent Office decisions, at least two of which have wiped out IPR rulings by the administrative patent judges. Trump administration attorneys have said in court documents that the government will seek en banc review of the case, and some practitioners say that the case may be headed to the Supreme Court.

McCarter partner Kia Freeman said, “*Arthrex* opened a can of worms, and I don’t see an obvious good resolution to all these issues that have been raised...Usually, I think there could be a few ways to resolve, but here I don’t see a clear path to resolution.”