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Patent case: BedGear LLC v. Fredman Bros. Furniture Co. Inc., USA

Cheryl Beise (Wolters Kluwer Legal & Regulatory US) · Monday, November 25th, 2019

Three PTAB decisions were decided by APJs invalidly appointed, but two Circuit Judges would find the defect wholly cured by Federal Circuit's recent Arthrex decision.

The U.S. Court of Appeals for the Federal Circuit has vacated three Patent Trial and Appeal Board decisions following inter partes review of three patents on the ground that patent owner BedGear LLC argued in its opening brief that the Administrative Patent Judges (APJs) assigned to the case were appointed in violation of the Appointments Clause of Article II of the U.S. Constitution. In accordance with the October 31, 2019, decision of Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.*, the cases were remanded for reassignment to a new PTAB panel. Circuit Judge Dyk, joined by Circuit Judge Newman, filed a separate opinion concurring with the notion that the panel was bound to follow *Arthrex*, but disagreeing with *Arthrex*'s remedy of requiring a new hearing before a new PTAB panel. According to Judge Dyk, the *Arthrex* panel opinion "improperly declined to make its ruling retroactive so that the actions of APJs in the past were compliant with the constitution and the statute." Judge Dyk would hear the decisions on the merits, rather than vacate them for a new hearing before a new panel below (*BedGear, LLC v. Fredman Bros. Furniture Co., Inc.*, November 7, 2019, per curiam).

Case date: 07 November 2019

Case number: No. 2018-2082

Court: United States Court of Appeals, Federal Circuit

A full summary of this case has been published on [Kluwer IP Law](#).

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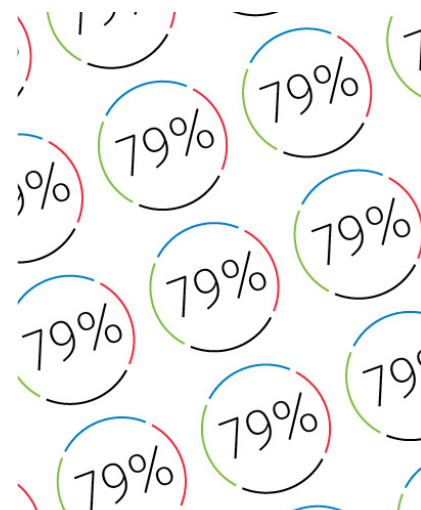
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