

## VLP Partner David Thibodeau Quoted in the Law360 Article “Fed. Circ. Criticism Trains Spotlight On PTAB Procedures”

VLP Partner David Thibodeau was quoted in the *Law360* article “Fed. Circ. Criticism Trains Spotlight On PTAB Procedures.”

The article reported on an unusual Federal Circuit opinion criticizing the Patent Trial and Appeal Board’s (PTAB) procedures for joining petitions and convening expanded panels — without actually ruling on them.

According to the article, the appeals court affirmed an inter partes review decision that an air conditioning patent is invalid. However, two judges filed a concurring opinion saying that they had “serious questions” about PTAB rules that allow companies join together separate petitions in order to evade requirements on when patent challenges must be filed.

The article noted that the circuit judges also questioned whether it is appropriate for the U.S. Patent and Trademark Office to create larger panels to rehear cases, which often overrule the first panel’s finding, in order to maintain uniform decision-making by the board. The court held that it did not need to address those issues to find the patent at issue invalid.

Mr. Thibodeau said that by suggesting that the PTAB’s practices on joinder and creating expanded panels could be suspect, the concurrence “may be some indication that the Federal Circuit is considering potentially reining in what the patent office is doing.”

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