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## Schmitt quoted in "AIA Constitutionality Case Could Create Patent Law Chaos"

*Law360*

Michael Best Partner Marshall Schmitt was quoted in *Law360*'s article, "AIA Constitutionality Case Could Create Patent Law Chaos" on June 13, 2017.

A case the U.S. Supreme Court agreed to hear Monday challenging the constitutionality of America Invents Act reviews could throw patent law into turmoil by derailing a system that has been used to challenge thousands of patents, while creating a host of new issues for courts to resolve.

The justices decided to consider an appeal by Oil States Energy Services LLC, which is arguing that under the U.S. Constitution, only federal courts, not executive branch tribunals like the Patent Trial and Appeal Board, can decide whether a patent is invalid.

If the high court agrees, it would likely eliminate a system that has been embraced by accused infringers as an efficient way to invalidate patents. Such a ruling would also generate new questions, including what happens to all the patents the PTAB has already invalidated, and whether other programs like re-examination are unconstitutional as well.

"The Supreme Court's decision holds the potential to be one of the most significant patent decisions in decades," said Marshall Schmitt of Michael Best & Friedrich LLP. "AIA trials have become the focal point of many patent disputes. Finding that these trials are unconstitutional will raise a myriad of issues that will require either congressional action or a monumental investment in judicial resources."

To read the entire *Law360* article, [click here](#).

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