

Patent Law Uproar

[John F. Duffy](#), a law professor at George Washington University, has recently released a [controversial paper](#) that calls into question thousands of decisions made by the [Board of Patent Appeals and Interferences](#) since 2000. According to Duffy, the appointment process used to select judges for the panel has been [unconstitutional](#) since 1999, when a law was passed that gave the power of appointment, once enjoyed by the [Secretary of Commerce](#), to the [director](#) of the [Patent and Trademark Office](#). Duffy contends that the Constitution clearly delineates who can make what appointments, and that the undersecretary of a department does not meet these qualifications. Thus, the justices were appointed improperly, and judging from the amount at stake in many of their decisions, losing parties to their cases are now likely to challenge their decisions.

One such challenger is the company [Translogic Technology](#), which lost its case before the U.S. Court of Appeals for the Federal Circuit in January previous to the release of Duffy's article. Translogic has appealed to the Supreme Court, which has not yet agreed to hear the case.

Source: [New York Times](#)