



June 29, 2108

United States Patent and Trademark Office

To Whom it May Concern:

Regarding: **Proposed Rule Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board**

We are writing to support the director in his proposed rule changes.

As an owner of infringed US patents which are the subject of litigation through both the PTAB process and the Article III courts, we write to encourage these initiatives and more along the same lines.

We have experienced the extraordinary gamesmanship utilized by a recidivist patent infringer delaying every single step of the process, including the last minute application for a Inter Partes Review (IPR) on day 365 of the 365 days available. These delays are a travesty of justice to the infringed party simply seeking a day in court, but more troubling is the fact that the time and money invested in an IPR can end up being completely wasted. With differing standards between the USPTO and the Article III courts, PTAB decisions on IPRs can essentially be rendered moot and a waste of time by the subsequent proceeding in a court where the subject matter can be re-examined but through a slightly different legal lens.

We see the potential to avoid that wasteful duplication of work by adopting uniform standards which will simplify the process, avoid unnecessary expense and avoid significant delays. We feel this is an addressable systemic error that can and should be resolved as proposed by the director.

Specifically;

- a) The use of the BRI (broadest reasonable interpretation) as a guide for the USPTO is a misguided methodology which makes no sense given the ultimate arbiter of validity is an Article III court which uses the Phillips standard of claim construction. The USPTO should amend its practices

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to use the same standards as the courts to avoid duplication of proceedings which can result in determinations that can in many cases be effectively useless for the participants.

- b) Defer to prior constructions, absent clear error. The PTAB should adopt any previous patent construction findings. The findings of other tribunals and courts involve substantial resources and merit respect in all subsequent related hearings.

The director correctly speaks to the issue of fairness in proceedings. Current AIA standards are out of alignment with the standards applied in federal courts and ITC proceedings. This differential creates an unbalanced system. By standardizing the rules as proposed, we submit Congress will restore balance to the system. This provision of consistent standards will create greater certainty and predictability for inventors, patent owners, licensees and litigants when disputes arise which will be inherently fairer to all concerned.

We applaud the director for seeking to respectfully utilize the work product all adjudicating participants and to create consistency between the rulings of the USPTO and courts which are the final arbiter in patent matters.

Thank you.

A handwritten signature in black ink, appearing to read "Erik Djukastein". The signature is fluid and cursive, with a large initial "E" and "D".

Erik Djukastein, CEO  
**AVENUE INNOVATIONS INC.**