

**From:** honeckb@aol.com  
**To:** [PTABNPR2018](#)  
**Subject:** Comment to Proposed Rule Change: Changes to the Claims Construction Standard for Interpreting Claims in Trial Proceedings Before the PTAB  
**Date:** Sunday, July 1, 2018 9:06:42 AM

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Sir/Madam,

As an investor in the patent space, I have watched as the value of patents, patent portfolios, and innovation companies has dropped substantially due the lack of predictability brought on by PTAB proceedings, and the cancellation of patents already adjudicated in District Courts as not invalid. Meanwhile these conditions have led to the US patent system falling from #1 to #12 worldwide in the 2018 rankings for patent protection, as published by a US Chamber of Commerce report. Future investment towards innovation by individuals, financial firms, and companies will remain stalled until predictability is restored. As the recent SCOTUS ruling in Oil States indicated, there is further work to be done to ensure fairness in due process, as well as considerations regarding applicability of AIA post-grant proceedings against pre-AIA issued patents, but I am encouraged and thankful that action is proposed at this time on the claim construction standards.

I strongly support, and urge adoption of, the proposed rule that is the subject of your May 3, 2018 notice. It is absolutely necessary that the proposed rule be adopted as soon as possible for a multitude of reasons, including beginning the restoration of our patent system to global preeminence, encouraging innovation, and fulfillment of the spirit and original purpose underlying the AIA.

Of critical importance, I urge further that the new rule be implemented so as to be applicable to any USPTO post grant proceeding that is at any stage, including those that have been made the subject of a final order and that are now, or sufficiently recent that they could be, in the appellate process. More specifically, USPTO should, *sua sponte*, vacate all PTAB orders that have been issued for all post grant proceedings in which any claims construction standard other than Phillips was used, in which the result was adverse to the patent-holder, and where the order has been appealed (and remains in any stage thereof) or remains subject to appeal. This implementation step, also, is necessary in order to achieve the goals of the AIA, basic fairness, conservation of litigation expense, and for purposes of judicial economy.

Finally, I also urge that the rule change be expanded to be made applicable to all post grant reviews/reexaminations/IPRs (regardless of their statutory basis), so that whenever a claims construction is at issue in any USPTO post grant proceeding, under any statute, only one standard, Phillips, is used.

Thank you,

Brian Honeck  
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