

July 9, 2018

The Honorable Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Re: PTAB Notice of Proposed Rulemaking 2018: Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board **[Docket No. PTO-P-2018-0036]**

Dear Director Iancu:

On behalf of California Life Sciences Association (CLSA) – the premier statewide public policy organization representing California’s leading life science innovators, including medical device, diagnostic, biotechnology and pharmaceutical companies, research universities and private, non-profit institutes, and venture capital firms – thank you for the opportunity to comment on the US Patent and Trademark Office (PTO)’s proposed changes to the claim construction standard for interpreting claims in trial proceedings before the Patent Trial and Appeal Board (PTAB).

CLSA believes that harmonization of the PTO’s claim construction standard is critical for giving patent owners greater due process protections and achieving greater consistency in court, and we support the changes proposed by PTO.

As you know, life sciences research is extremely expensive and attracting investment into companies developing the next generation of treatments, therapies, and technologies depends on a strong, reliable patent system. California innovators have had more patents granted than any other state in the US, with more than 40,200 patents granted in 2015 alone.¹ Specifically, with more than 3,000 companies employing nearly 300,000 people across the state, the biomedical industry in California consists mainly of relatively small, entrepreneurial, and venture capital-backed firms that have yet to bring products to market.² For these companies, intellectual property (IP) is typically their most valuable and sometimes only asset. Thus, patent certainty and enforcement rights are a top priority for California’s research universities, institutes and biomedical companies large and small.

CLSA is pleased to join a broad and diverse group of stakeholders in supporting the proposed changes to the claim construction standard for interpreting claims in trial proceedings before the PTAB. Specifically, CLSA strongly supports using the same construction standard as in Federal District Courts and the International Trade Commission (ITC) (the “Phillips standard”) for patent claims in *inter partes* review (IPR), post-grant review (PGR), and covered business method patents (CBM) proceedings before the PTAB, rather than the current standard of broadest reasonable interpretation (BRI). CLSA believes this change will provide greater predictability and certainty in the patent system and encourage entrepreneurs to continue investment in high-risk life sciences innovation.

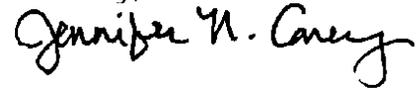
¹ “Patent Counts By Country, State, and Year - Utility Patents (December 2015).” Patent Technology Team Monitoring Report, US Patent and Trademark Office. December 2015.

² 2018 California Life Sciences Industry Report. CLSA & PwC. November 2017.

We applaud your leadership on this important issue and look forward to supporting your efforts to enact this change.

Please let me know if you would like to discuss our views in greater detail, or if CLSA can be of assistance to you in any way – I can be reached at jcarey@califesciences.org or (202) 743-7559.

Sincerely,



Jennifer Nieto Carey
Vice President – Federal Government Relations & Alliance Development

