

From: Weiss
To: [PTABNPR2018](#)
Subject: Comment to Proposed Rule Change: Changes to the Claims Construction Standard for Interpreting Claims in Trial Proceedings Before the PTAB
Date: Thursday, June 7, 2018 9:54:25 PM

Dear Sir/Madam:

I strongly support, and urge the adoption of, the proposed rule that is the subject of your May 3, 2018 notice, Changes to the Claims Construction Standard for Interpreting Claims in Trial Proceedings Before the PTAB.

The Phillips claim construction standard will restore consistency and fairness to our patent system. It must replace the Broadest Reasonable Interpretation (BRI) standard, which has resulted in abuse and inequity, to name just two of its faults. The BRI standard has caused extensive harm to our patent system.

While there are many reasons for adopting this proposed rule as soon as possible, two noteworthy ones are that it will encourage innovation and begin to restore our patent system to global preeminence.

Furthermore, I would suggest 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 basic fairness, conservation of litigation expense, and for purposes of judicial economy.

And, I 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.

Finally, if a patent has been challenged in an Article Three Federal Court and has been found to be Not Invalid, it should not be subject to IPR's or Re-Exams.

Thank you for your consideration.

Clair W. Weiss