

From: Cecilia Youngs
To: [PTABNPR2018](#)
Subject: Public Comment #PTO-P-2018-0036
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By Email to: PTABNPR2018@uspto.gov

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Attn: Vice Chief Administrative Patent Judge Michael Tierney and Jacqueline Wright Bonilla

RE: Public Comment on Changes to Claim Construction Standard
Docket Number: PTO-P-2018-0036

Dear Vice Chief Administrative Patent Judges Michael Tierny and/or Jacqueline Wright Bonilla:

Thank you for the opportunity to comment on amendments to the rules for the Leahy-Smith America Invents Act.

I urge adoption by the PTAB of the same standard used by Article III federal courts in claim construction interpretation and the removal of the current standard, the Broadest Reasonable Interpretation (BRI), currently used. Applying a litigation standard which is the same in the federal courts and in the PTAB will ensure consistency, so that an infringer who has lost in the Article III courts does not win at PTAB in a post-grant review because of the application of a different standard.

Giving the infringer “another bite of the apple” in a PTAB proceeding is unfair. It allows the infringer to use facts which have already been reviewed in the federal courts. Since the original patent examination already included an extensive review before being granted and the patent was subjected to a thorough claim construction review in the trial court, the current PTAB standard works only to confuse and incentivize litigation. It penalizes the patent holder. A “second bite at the apple” drives up the cost of the patent process, including the cost of defending the patent against infringement, wastes precious judicial resources, and makes the judicial system less efficient.

Finally, I also urge you to adopt the proposed rule providing that the USPTO will actually give consideration to any previous claim construction interpretation from the federal courts. This will give the USPTO both the right to use the new standard and the duty to use it. Thank-you.

Sincerely,

/s/

Cecilia Y. Youngs

Attorney at Law