

**From:** Greg Maltz  
**To:** [PTABNPR2018](#)  
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Please accept my comments to Director Iancu's proposed rule changes to PTAB proceedings. As an independent inventor and startup founder with six patents granted and one pending, I am very concerned about these matters that are directly linked to the ability to protect inventions against infringement. A repeal of AIA is preferable, but at a minimum the Director's proposal must be adopted as a stopgap measure to shore up the severe erosion of patent protections caused by AIA, IPR and PTAB.

The high rate of failure in PTAB upholding patent claims through the IPR process has threatened to render patents worthless for independent inventors such as myself who lack the resources to litigate against infringers. The situation is in a crisis and any efforts to restore more certainty in this process must be pursued. In particular, Director Iancu's proposal to minimize differences between claim construction standards used in PTAB vs other courts could lead to greater uniformity and predictability of the patent grant.

The PTAB should defer to prior construction, absent clear error. Often an infringer will seek a broad construction for purposes of invalidating a patent and a narrow construction for purposes of arguing non-infringement. This is not fair. If a court or the PTAB has previously adopted a construction of the same term in the context of the same or essentially the same specification, this construction must be adopted by the PTAB. Also, as Director Iancu proposes, the Phillips standard of claim construction used in Article III courts must be applied to PTAB.

It is improper and harmful to continue to apply broadest reasonable interpretation to an issued patent because that is the same standard used during USPTO examination. Inspection prior to issuance necessarily must be stricter than inspection after issuance--otherwise there is no point in issuing a patent. If this issue is not fixed promptly, the bloated failure rates in PTAB will continue unchecked, threatening to render patents meaningless. Fixed metes and bounds must be imposed for patents to serve the useful purpose that has benefitted this country for more than 200 years up until the AIA was signed.

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