

From: cpapc _
To: [PTABNPR2018](#)
Subject: Director lancu's proposals to change rules concerning claim construction
Date: Thursday, June 28, 2018 4:27:19 PM

Director lancu:

The implementation of the PTAB under the America Invents Act and the Supreme Court's decision in Alice have devastated independent inventors and severely destabilized our patent rights. This is now paralyzing our innovation culture and businesses. I thank you for your increasing attention to this situation and hope that it will go a long way toward restoring confidence in patent rights – the promised exclusivity in exchange for publicly disclosing our inventions so others can build upon them. Stable and predictable patent rights provide often the only collateral we have to back investment to commercialize our inventions.

I write this letter in support of your recent proposals to change rules concerning claim construction.

1. Applying BRI (“broadest reasonable interpretation”), as is now the case, to an issued patent is incorrect and harmful because that is same standard used during examination. Inspection prior to issuance necessarily must be stricter than inspection after issuance. This is a basic premise of quality control (6 sigma, TQM, lean, etc.). If the original examination is not done to a tighter standard than what is desired for the final product, then the final product is doomed to a high failure rate. More importantly, a patent claim can only be permitted to have a single scope, regardless of the adjudication venue. The patent owner, the public, and any accused infringer must all have notice and be able to rely on fixed metes and bounds in order for the patent to serve any useful purpose. Therefore, I commend your initiative to apply the Phillips standard of claim construction used in Article III courts.
2. Often an accused 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. Therefore, the PTAB must defer to prior claim constructions, absent clear error.

I thank you for what you have done already for independent inventors exemplified in your memorandum to the examining corps concerning Berkheimer v. HP and for your continued decisive initiative in restoring our constitutionally guaranteed patent rights. You are a light at the end of the long tunnel.

Jay C.
independent inventor



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