

**From:** Jeffrey Kochelek  
**To:** [PTABNPR2018](#)  
**Subject:** Claims Construction Rules at the PTAB  
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I am the owner of a small engineering firm and the named inventor on several granted US patents. I am currently involved in three (3) separate IPRs that have been filed by infringers seeking to invalidate my patents. The infringers collaborate to share expenses while my company carries the full burden of the IPR proceedings.

I fully support the recommendations for the Rule Change that have been submitted by Director Iancu. In particular I support the following:

**Apply the Phillips standard of claim construction used in Article III courts.** 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.

**Defer to prior constructions, absent clear error.** 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.

Sincerely,

Jeffrey T. Kochelek