

From: Michael Plate
To: [PTABNPR2018](#)
Subject: PROPOSED PTO REGULATION CHANGES
Date: Monday, July 9, 2018 10:26:58 AM

Dear Mr. Iancu, Under Secretary of Commerce for Intellectual Property

Director of Patent and Trademark Office:

I strongly support your May 2018 proposed rule changes which support adoption of the Phillips Claim Construction Methodology rather than the present Broadest Reasonable Interpretation Methodology for PTAB proceedings. It is essential that these regulation changes be accomplished ASAP and applied to all post grant proceedings up to and including decisions that are now or will be subject to the appeal process.

Supported by its judicial system, the U.S. has always been a beacon of freedom and a great supporter of innovation and creativity. With passage of the AIA, the PTO and PTAB were supposed to help the judicial system by acting in a swift, efficient, and less costly manner in dealing with patent reviews. However, the PTAB instead, in the opinion of many, made the patent system appear to become more convoluted and less predictable and tilted strongly against patent holders. The PTAB based their decisions on the BRI standard rather than the Phillips standard used successfully by article 3 courts for many years. Subsequently, some outside assessments of PTAB patent proceedings post AIA assert that ultimately 85% of patent reviews have resulted in decisions against patent holders. Perhaps, more importantly, in cases where there were both court and PTAB proceedings, the majority of judgments at the PTAB were in conflict with results at the regular courts. Because of the disparity between the PTAB and court decisions, the final decision in any patent case could result in a "race to finality". Hence, the PTAB was not helping to support district courts but was, in fact, acting at odds with the article 3 courts.

As a result of the above, the patent system is certainly less than ideal as it now appears to be unfair to valid patent holders. Consequently, the U.S. has dropped to 12th in a recent ranking of the Global Patent Systems. How can an entrepreneur who has an important patent validated by the PTO spend the capital needed to start a company if there is a large chance that this patent will be invalidated at a later date by the same PTO that issued it? This situation must, of course, be corrected. Your proposed usage of the Phillips Claim Construction standard by the PTO / PTAB is warranted as a very good first step in aligning the PTO / PTAB with the court system. Under your thoughtful guidance, the U.S. patent system will become more reliable, predictable and again preeminent in the world.

Thank you.

Respectfully Yours,
Michael M. Plate, MD