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Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board

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Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board

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Comment on FR Doc # 2018-09821

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General Comment

I support proposed rule Docket No. PTO-P-2018-0036 (RIN 0651-AD16, document number 2018-09821)

Application of the Phillips standard of claim construction: The standard of claim construction that is used in Article III courts is a more appropriate standard in post-grant proceedings than the BRI (broadest reasonable interpretation). BRI is the standard currently used during examination so there is no substantial or compelling reason to re-use the BRI standard in post-grant proceedings

Deference to prior constructions: The current rules allow an accused patent infringer to seek a broad construction for purposes of invalidating a patent in post-grant proceedings and to seek a narrow construction for purposes of arguing non-infringement in federal court, which allows an accused infringer inconsistent processes solely for the purpose of avoiding liability for patent infringement, all to the detriment of the patent owner. Almost any balanced understanding of Due Process would require that all parties, including defendants, speak with the same voice from one proceeding to another.