

From: Michael Swift
To: [PTABNPR2018](#)
Subject: Re: Comment on Proposed Rulemaking - Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board
Date: Sunday, July 1, 2018 3:46:14 PM

Please delete my address and email from the bottom of the email previously sent.

Thank you

On Sunday, July 1, 2018, 12:12:18 PM MST, Michael Swift <michaelswiftaz@yahoo.com> wrote:

1 July 2018

To: Director Andrei Iancu
Director, United States Patent and Trademark Office (USPTO)

Subject: Comment on Proposed Rulemaking - Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board

Dear Sir,

> **Bottom line up front:** In response to the USPTO's request for comments on proposed rulemaking with regards to claim construction standard for interpreting claims in *inter partes* review (IPR), post-grant review (PGR), and the transitional program for covered business method patents (CBM) proceedings before the Patent Trial and Appeal Board (PTAB), I speak out loud and clear in support of the implementation of the Phillips standard of claim construction used in Article II courts.

> **Background:** I am writing to you as a very concerned citizen, hoping that with your recent appointment as Director of the USPTO, you can reverse the "downward spiral" of the US patent system. Since the formation of our great nation we have led the world in fostering innovation and invention. Unfortunately, the America's Invents Act (AIA) has created an environment which not only discourages, but drives away inventors. The processes and rules implemented with the AIA have severely destabilized patent rights and stifled our culture of innovation and business. It is a sad state of affairs when inventors will not patent their inventions because they feel our government will not protect their intellectual property from the unethical. Our nations' future greatness relies heavily upon stable and predictable patent rights.

> **Justification:** The application of BRI (broadest reasonable interpretation) to both initial examination and an issued patent is incorrect and harmful. A fundamental quality control requirement is that inspection prior to issuance must be stricter than after issuance. If the original examination is not held to a higher standard than desired for the final product, then the final product is doomed to a high failure rate. Moreover, 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.

> **Conclusion:** While the change to the Phillips standard is not the only change I believe will help our patent system (ie. PTAB), it is a positive step in the right direction. I sincerely believe implementation of the Phillips standard of claim construction used in Article II courts will go a long way toward restoring confidence in patent rights - the promised exclusivity in exchange for publicly disclosing inventions so others can build upon them. Stable and predictable patent rights provide often the only collateral to back investment required in order to commercialize inventions.

Thank you very much for your consideration.

Regards,

Michael Swift