

**From:** Mitch Wexler  
**To:** [PTABNPR2018](#)  
**Subject:** Comment to Proposed Rule Change: Changes to the Claims Construction Standard for Interpreting Claims in Trial Proceedings Before the PTAB  
**Date:** Wednesday, June 6, 2018 11:34:04 PM

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Sir/Madam:

I strongly support and urge adoption of the proposed rule that is the subject of your May 3, 2018 notice, subject as above.

It is absolutely necessary that the proposed rule be adopted as soon as possible for a multitude of reasons including beginning the restoration of our patent system to global preeminence, encouraging innovation and fulfillment of the spirit and original purpose underlying the AIA.

Of critical importance, I urge further that the new rule be implemented so as to be applicable to any USPTO post grant proceeding that is at any stage, including those that have been made the subject of a final order and that are now, or sufficiently recent that they could be, in the appellate process. More specifically, USPTO should, *sua sponte*, vacate all PTAB orders that have been issued for all post grant proceedings in which any claims construction standard other than Phillips was used, in which the result was adverse to the patent-holder, and where the order has been appealed (and remains in any stage thereof) or remains subject to appeal. This implementation step, also, is necessary in order to achieve the goals of the AIA, basic fairness, conservation of litigation expense and for purposes of judicial economy.

Finally, I urge that the rule change be expanded to be made applicable to all post grant reviews/reexaminations/IPRs (regardless of their statutory basis), so that whenever a claims construction is at issue in any USPTO post grant proceeding, under any statute, only one standard, Phillips, is used.

Thank you.

Mitchell Wexler