

From: Paul Michel
To: [PTABNPR2018](#)
Subject: Proposed Rule 83 FR 21221
Date: Friday, June 29, 2018 12:17:48 PM

Dear Director Iancu:

I support the proposed new Rule to apply in post-grant reviews under the AIA, the legal, court(Phillips) standard and method of claim construction. Broadest Reasonable Interpretation (BRI) makes sense in examinations to force applicants to amend, disclaim or explain apparent over breadth of application claim scope. But in a "Trial" over alleged invalidity of an issued patent, BRI has no proper place, especially given the practical unavailability of free amendments and complete unavailability of examination thereof.

AIA Reviews have virtually all the earmarks of a district court Declaratory Judgement Complaint of invalidity and should construe claims accordingly.

The change would avoid the anomalous reality of inconsistent validity rulings by courts compared to the Patent Trial and Appeal Board. It would also enable the AIA estoppel provisions to operate meaningfully.

I see no justification for retaining BRI. Familiarity to PTAB members is not a valid reason. Nor are inapt comparisons to examination or interference use of BRI.

The new Rule is clearly within the scope of powers granted to you in the AIA itself.

It will increase the credibility of the patent system and encourage inventors to use the system, rather than retreating to reliance on trade secrecy which impedes the flow of information on technological advances.

Although I could readily provide vast detail to further explain my views, doing so seems superfluous in view of the overwhelming merit of your proposal.

I congratulate you for acting on this issue, especially after your predecessors continually failed to act, despite the blatantly apparent need and the constant pleas of most of the patent community, including yours truly.

Respectfully,

Paul R. Michel, CAFC Chief Judge(Ret).