

From: PETER WELLES
To: [PTABNPR2018](#)
Subject: Finally, I urge also 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, unde...
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Apply the Phillips standard of claim construction used in Article III courts. Applying BRI (“broadest reasonable interpretation”), as is now the case, to an issued patent is incorrect and harmful because that is same standard used during examination. Inspection prior to issuance necessarily must be stricter than inspection after issuance. This is a basic premise of quality control (6 sigma, TQM, lean, etc.). If the original examination is not done to a tighter standard than what is desired for the final product, then the final product is doomed to a high failure rate. More importantly, 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. **Defer to prior constructions, absent clear error.** Often an accused infringer will seek a broad construction for purposes of invalidating a patent and a narrow construction for purposes of arguing non-infringement. This is not fair. If a court or the PTAB has previously adopted a construction of the same term in the context of the same or essentially the same specification, this construction must be adopted by the PTAB. I strongly support, and urge adoption of, the proposed rule that is the subject of your May 3, 2018 notice regarding PTAB's use of the Phillips claims construction standard and of prior claim constructions. Finally, I urge also 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, and with due consideration being given to prior claims constructions. Peter Welles