



July 9, 2018

The Honorable Andrei Iancu  
Under Secretary of Commerce for Intellectual Property  
Director of United States Patent and Trademark Office  
U.S. Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22313

Via electronic mail: [PTABNPR2018@uspto.gov](mailto:PTABNPR2018@uspto.gov)

**RE: SBE Council Comments on USPTO's Proposed Changes to the Claim Construction Standard Used in PTAB Proceedings – DOCKET No. PTO-P-2018-0036**

Dear Under Secretary Iancu:

The Small Business & Entrepreneurship Council (SBE Council) is pleased to submit comments to the United States Patent and Trademark Office (USPTO) with regard to proposed changes to the claim construction standard used in Patent Trial and Appeal Board (PTAB) hearings. SBE Council supports the proposed changes as the consistency, fairness and efficacy they promote will be very beneficial for entrepreneurs and small businesses.

SBE Council is a nonprofit advocacy, research and education organization dedicated to protecting small business and promoting entrepreneurship. For 25 years, SBE Council has focused on public policy and private sector initiatives that strengthen the ecosystem for healthy startup activity, investment, and small business growth. Protecting and strengthening intellectual property (IP) and property rights are core issues at SBE Council, as they are foundational for robust entrepreneurial activity and innovation. The more than 100,000 members and supporters of SBE Council count on a strong and consistent system that protects IP, which in the end helps drive business growth, investment, and risk-taking activity.

As noted above, SBE Council supports USPTO's proposals to modify PTAB's proceedings, which will provide greater due process protections and more consistency. Specifically, SBE Council supports the changes to the claim construction standard used for interpreting inter partes review (IPR), post-grant review (PGR), and the transition program for covered business methods

(CBM) proceedings before PTAB. SBE Council supports the proposal to replace the broadest reasonable interpretation standard (BRI) for constructing unexpired patent claims that are used by the PTAB in IPR, PGR and CBM with the Phillips standard, which the Federal Circuit Courts and the International Trade Commission use when interpreting patents.

Certainty and consistency in interpreting patent claims are critically important to entrepreneurs. This predictability for patent holders is also important to capital formation and capital access. A predictable and consistent patent review process will encourage more entrepreneurs to bring their innovations to market, and help to ensure these innovations are financed. Higher levels of innovation is good for the U.S. economy, its competitiveness and consumers – including small businesses - who benefit from technological improvements.

Furthermore, by using the same standard across forums, costs to entrepreneurs will be lower and the efficiency of the court system will be improved. This is beneficial for all parties and will help to improve the competitiveness of the U.S. patent system overall.

A strong, fair and efficient patent system is central to the U.S. economy and its innovative capacity. Entrepreneurs and small businesses in particular will benefit from USPTO's proposed changes, which will create more consistency and certainty, and allow them to deploy their limited resources on high-value productive activity – that is, bringing their innovations to market or scaling these innovations to the betterment of society.

Please feel free to contact SBE Council if we can be of assistance or answer questions. Thank you for your leadership and work on this very important matter for U.S. entrepreneurs and small businesses.

Sincerely,



Karen Kerrigan  
President & CEO

## **Protecting Small Business, Promoting Entrepreneurship**

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