

**From:** Stephen Reed  
**To:** [PTABNPR2018](#)  
**Subject:** Comment On: PTO-P-2018-0036-0001  
**Date:** Saturday, July 7, 2018 4:05:11 PM

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**Docket: PTO-P-2018-0036**

Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board

**Comment On: PTO-P-2018-0036-0001**

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I strongly support the adoption of the proposed rule change to the Claims Construction Standard for Interpreting Claims in Trial Proceedings before the PTAB as presented in your May 3, 2018 notice.

In April of this year, USPTO Director Andrei Iancu delivered his first major policy speech. He said emphatically that in order for the Trump Administration to deliver on the mission to sustain economic growth, the U.S. patent system cannot continue, and will not continue, down the current path:

*At my swearing-in, I remarked that through the doors of the U.S. Patent and Trademark Office comes our future. And indeed, it does, and it always did. We must celebrate that. From Thomas Edison to the Wright Brothers, from Stanley Cohen and Herbert Boyer to Steve Jobs, American inventors have fueled the imagination of our people for generations. We are a pioneering people who overcome large obstacles in order to realize our dreams and create prosperity. Inventors help make dreams reality, and American invention changes the world. Indeed, with American patents, humans made light, began to fly, treated disease, and enabled instant communications across the globe from tiny devices in our pockets.*      **USPTO Director Andrei Iancu**

The implementation of the PTAB under the American Inventors Act has had an unintended deleterious impact on the extraordinary accomplishments of the most innovative and creative members of our society.

Hard working and inspired inventors have to spend millions of dollars and countless hours in desperate attempts to defend what they have already earned because their patents are under attack from the PTAB, which is using a different standard (BRI) to determine the validity of those patents. The BRI is used at the start of the original Patent application and is narrowed down throughout the process to more precisely identify and define the most salient aspects of the invention. It makes no sense to go through that entire process, only to have the PTAB return to the original BRI in their determination to kill off as many patents as possible.

Why do Article 3 courts use one standard (Phillips) and the PTAB use another (BRI). If an Article 3 court has validated the patents, then it is wrong to have those patents deemed invalid by the PTAB.

The key points I believe we should support are:

**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.

In conclusion, I am a private investor with a modest portfolio which has suffered significantly due to the actions of the PTAB. This has imperiled my retirement income security and my ability to support my family. Real harm is being done by the PTAB not only to the inventors, but to companies and individuals who invest based on patents that have been granted by the USPTO and also validated in Article III courts.

Thank you for your consideration of my comments

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