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To: [PTABNPR2018](#)
Cc: [Timothy Maloney](#); [Nicholas Peters](#)
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Regarding the proposed rule change,

[A] claim of a patent, or a claim proposed in a motion to amend, “shall be construed using the same claim construction standard that would be used to construe such a claim in a civil action to invalidate a patent under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.”

I comment as follows:

The language “such claim” in the “including” clause appears to be ambiguous between the claim at issue and claims like the claim at issue because the proceeding language recites to both “the claim” of a patent and “such a claim.” To increase the certainty that the claims of a patent will be construed consistent with the *Phillips* standard the “such claim” language should be modified to read “the claim.”

One possible outcome of this ambiguity is the development of a body of PTAB decisions imparting broad definitions to various terms, and the Board’s subsequent deference to their own previous interpretation over those interpretation made in light of the claims themselves, the specification, and the prosecution history.

Thank you for considering my comments.

--Thomas James

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