

From: Ted Schwartz
To: [PTABNPR2018](#)
Subject: Changes to the Claim Construction Standard used in AIA Trial Proceedings
Date: Monday, July 2, 2018 7:56:07 AM

Dear Director Iancu,

I have followed the implementation of the AIA since its inception and have understood one stark fact: The attempt at a cure for some inequities in the patent infringement and legal remedy process has created an outcome with many more draconian consequences than the malady that it was established to correct. Unfortunately, Congress did not anticipate the very dangerous fall out of strategic system gaming, significant incremental increases in litigation costs, deterioration and erosion of a level playing field, adverse uncertainty in patent viability and the immeasurable negative outcome that has seriously begun to impact our American standing in the world to invent and create.

In some regards the “new and improved” system with the PTAB (an Article I Court) generating inconsistent and many times conflicting rulings from Article III Court decisions results in what may be considered to be double jeopardy. The whole legal apparatus and jurisprudence system of Article III courts allows for a much more impartial and unprejudiced hearing, review and outcome. However, until Congress acts to remedy the current flawed law your proposed rule to replace the BRI standard with the Phillip’s guidelines for claim construction would help mitigate this ongoing inequitable disorder. Inventors, investors, businesses and the marketplace would be on much firmer ground in trying to predict and understand patent viability, implementation and survival.

In your November 29, 2017, nomination hearing before the U.S. Senate Committee on the Judiciary I was very encouraged with your comments and outlook for your new assignment as Director of the PTO. Your references to our country’s inventors and the historic impact that intellectual property has had in enabling our country to become exceptional in so many ways was much appreciated. I wonder what Benjamin Franklin, Thomas Edison, and the Wright Brothers would think about our current environment for cultivating and implementing new patents would be. I believe you understand the nature of the current crisis that has fallen upon our IP system and look forward to your forthcoming empirical remedies.

Please correct the above travesties by replacing the PTAB standard of using the BRI to the Phillips standard utilized by our Article III courts. Also, once an Article III court has ruled on patent validity, any PTAB action should immediately cease. This will level the playing field and restore Article III courts to their designed intention, that of reviewing their cases without the need to lower their evidence standards. The other proposed change, providing deference to an Article III court findings, interpretations and rulings would streamline the court process and restore order to the Rule of Law.

Thank you for listening to a fellow citizen and investor. Please stand firm in correcting the misuse of the PTAB and the misinterpretation of the AIA.

Sincerely,
Ted R. Schwartz