

From: Warren Zeikowitz
To: [PTABNPR2018](#)
Subject: New Rule Change concerning BRI
Date: Thursday, June 7, 2018 12:00:31 PM

I strongly support, and urge adoption of, the proposed rule that is the subject of your May 3, 2018 notice, subject as above.

It is absolutely necessary that the proposed rule be adopted as soon as possible for a multitude of reasons, including beginning the restoration of our patent system to global preeminence, encouraging innovation, and fulfillment of the spirit and original purpose underlying the AIA.

With the current system having the Broadest interpretation at the PTAB not lining up to the Federal Court Philips Standard, the entire process has become a sham with virtually no protection for the inventor. Not to mention anyone including a short hedge fund can bring an IPR action without having any direct interest in the patents in suit. You have it right Mr. Iancu, this change is not only needed it is a must to restore predictability and fairness to our patent system, both characteristics which have been abandoned under the previous administration and PTO Director. You have a unique chance to restore all that damage with your new office and I would encourage you to follow through and make this the first of many changes to restore fairness and predictability. Unlike others before you I have much more faith in the 10,000 Men and women that work hard at the PTO everyday to issue fair patents with no prejudice or influence. If 1% of those patents need a review and a reversal, that would be a lot, let's put this terrible situation where it belongs, the junkyard, and align the PTAB with the court system and throw out their abuses of the BRI standard. Shame on SCOTIS in Cuzzo, they had their chance to right the wrong and failed, you can fix that with the power vested in you by the very act that caused it, the AIA.

Of critical importance, I urge further that the new rule be implemented so as to be applicable to any USPTO post grant proceeding that is at any stage, including those that have been made the subject of a final order and that are now, or sufficiently recent that they could be, in the appellate process. More specifically, USPTO should, *sua sponte*, vacate all PTAB orders that have been issued for all post grant proceedings in which any claims construction standard other than Phillips was used, in which the result was adverse to the patent-holder, and where the order has been appealed (and remains in any stage thereof) or remains subject to appeal. This implementation step, also, is necessary in order to achieve the goals of the AIA, basic fairness, conservation of litigation expense, and for purposes of judicial economy.

Finally, I also urge 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.

Best Regards,

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