

From: Dustin Briquelet
To: [PTABNPR2018](#)
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Director Iancu:

The United States continues to lose ground to our international counterparts regarding the strength of US patents and the ability to defend them. The main cause of this is the America Invents Act utilizing BRI in the IPR process at the PTAB. It is crazy to think that the USPTO uses the Phillips claim construction when issuing patents, the District Courts use the Phillips claim construction, but the PTAB uses BRI in the IPR process when an infringer would like to have a patent invalidated. This sheer lunacy has allowed large companies (Apple, Google,) to steal patented ideas from smaller organizations / individuals, lose in district court, then have the patents invalidated at the PTAB due to the use of BRI which brings in a slew of different prior art, most unrelated to the patent at hand.

To quote Gene Quinn:

4. **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.

5. **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.

As it stands, technological progress will slow as inventors realize that they have no rights to monetize or defend their ideas. International patents are beginning to look more attractive as they are able to be defended in court. This situation must change if the USA would like to remain at the forefront of technological advancement.

Sincerely,

Dustin Briquelet