

From: Kevin J. Zilka
To: [PTABNPR2018](#)
Subject: Support of Proposed Changes by USPTO
Date: Friday, July 6, 2018 3:20:40 PM

USPTO,

I have been practicing in the area of patent law for over 20 years, and am a principal at my firm, Zilka-Kotab, PC.

In my opinion, the Phillips standard of claim construction used in Article III courts should be applied in the PTAB. The ambiguity and lack of uniformity that has resulted from dueling standards is untenable. Using a claim construction standard that is consistent in federal courts removes the argument that the AIA trial proceeding is inherently unfair. Additionally, it ensures a consistent standard of review for any patent disputed after issuance, regardless of the court that inspects such patent.

Further, I believe that prior constructions should be applied, absent clear error. This will prevent accused infringers from seeking a broad construction for purposes of invalidating a patent and a different (possibly narrower) construction later for purposes of arguing non-infringement. This can only be remedied by requiring that constructions adopted by the Courts to also be adopted by the PTAB.

In summary, I encourage support of the recent proposed changes in the following:
<https://www.federalregister.gov/documents/2018/05/09/2018-09821/changes-to-the-claim-construction-standard-for-interpreting-claims-in-trial-proceedings-before-the>.

Thanks,

Kevin

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