

From: Terry O'Mara
To: [PTABNPR2018](#)
Subject: Support of Proposed Changes by USPTO
Date: Friday, June 29, 2018 10:08:32 PM

My name is Terry O'Mara. I'm an inventor/product developer.

I am writing in support of proposed changes by the USPTO to the claim construction standard for interpreting claims in trial proceedings before the patent trial and appeal board. Docket number (PTO-P-2018-0036).

Recognized as one of the smartest men of the last century and as a former patent examiner himself, Mr. Albert Einstein stated "We cannot solve our problems with the same thinking we used when we created them." 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. Thus, it is crucial that we apply the Phillips Standard of claim construction used in Article III courts.

Also, we must 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. Not only is this not fair, but it is a clear manipulation of the system and the standards meant to be upheld. 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.

Thank you for your consideration,

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