



ARE PTAB Alert: PTAB Adopts Phillip’s Style Claim Construction Standard for IPRs, PGRs and CBMs Filed on or after November, 13, 2018

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(October 11, 2018) On October 10, 2018, the U.S. Patent and Trademark Office (USPTO) issued its much anticipated final rule with respect to claim construction in post-issuance proceedings. Specifically, the USPTO issued a new claim construction standard with respect to America Invents Act trials and proceedings, including inter partes review (IPR), post-grant review (PGR), and the transitional program for covered business method patents (CBM) before the Patent Trial and Appeal Board (PTAB). The new claim construction standard will be in effect for all petitions filed on or after November 13, 2018.

The final rule issued by the USPTO replaces the PTAB’s “broadest reasonable interpretation” standard with the claim construction standard applied by Federal District Courts in civil actions under 35 U.S.C. § 282(b), the same standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). For new petitions filed on or after November 13, “a claim of a patent, or a claim proposed in a motion to amend ..., shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. Any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission, that is timely made of record in the ... proceeding will be considered.” 37 CFR 42.100(b), 42.200(b) and 42.300(b).

The “broadest reasonable interpretation” standard remains in effect for petitions challenging unexpired patent claims filed by November 12, 2018. If you have any questions, please feel free to contact one of our lawyers.

A text version of the USPTO final rule can be found [here](#).

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