

# PTO Must Apply Phillips Standard when Construing Expired Patents

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In an opinion addressing the standard for claim construction of a patent that expires during reexamination, the US Court of Appeals for the Federal Circuit upheld the Patent Trial and Appeal Board's (PTAB's or Board's) decision finding all challenged claims invalid, but found that the PTAB had used the incorrect standard for its claim construction. *In re: CSB-System Int'l, Inc.*, Case No. 15-1832 (Fed. Cir., Aug. 9, 2016) (Stoll, J).

CSB is the owner of a patent directed to a circuit arrangement for integrating an electronic data processing system with telephone systems connected to an integrated services digital network telephone network. A third party successfully petitioned for *ex parte* reexamination of the patent. During the resulting reexamination proceeding, the examiner construed several claim terms, applying the broadest reasonable interpretation (BRI) standard for the terms "personal computer" and "LAN server," and, using these constructions, rejected the challenged claims. The PTAB affirmed. CSB appealed, arguing that the PTAB applied the incorrect standard in construing the claims.

The Federal Circuit agreed with CSB that the PTAB should have applied the *Phillips* standard rather than the BRI standard because the patent expired during the reexamination. While claims are normally construed under the BRI standard in US Patent and Trademark Office proceedings, because an expired patent can no longer be amended to preserve its validity, its claim terms should be construed under the narrower *Phillips* standard used in district courts.

The Federal Circuit, however, found that there was no basis for limiting the claims as narrowly as CSB argued. For instance, the Court found there was no support for limiting the claim term "personal computer" to exclude personal computers running software to emulate terminals, nor did the term "LAN server" require embellishment beyond its plain meaning.

Thus, the Federal Circuit concluded that the claim construction applied was correct even under the *Phillips* standard, and affirmed the PTAB's rejection of all claims.

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