Published on *The National Law Review* https://natlawreview.com

USPTO Seeks to Change BRI Patent Claim Construction Standard

Article By:

Ryan M. Murphy

Suni Sukduang

The United States Patent Trademark Office announced on May 8 that it proposes to replace the broadest reasonable interpretation ("BRI") standard for construing unexpired patents with the same standard used in Federal district courts and the International Trade Commission ("ITC"). Under the proposed approach, the Office would apply the principles that the Federal Circuit articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc) and its progeny.

As held in *Phillips*, the "words of a claim are generally given their ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips*, 415 F.3d at at 1212?1313. The *Phillips* standard would be applied in all AIA challenges and would take into account the claim language itself, specification, and prosecution history pertaining to the patent.

The Office proposes to amend Rules 42.100, 42.200, and 42.300 as follows: 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 such claim in a civil action to invalidate a patent 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."

The Office has requested input from the public within 60 days on the proposed rule changes and on how the Office should implement the changes if adopted. To provide comments, please email the Office at ptabnpr2018@uspto.gov.

National Law Review, Volumess VIII, Number 137

Source URL:https://natlawreview.com/article/uspto-seeks-to-change-bri-patent-claim-construction-standard