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Final rule changing claim construction standard for interpreting claims in AIA trial proceedings

The United States Patent and Trademark Office (USPTO) has published a final rule changing the claim construction standard applied during inter partes review (IPR), post-grant review (PGR), and the transitional program for covered business method patents (CBM) proceedings before the Patent Trial and Appeal Board (PTAB).

The final rule replaces the “broadest reasonable interpretation” standard with the federal court claim construction standard that is used to construe a claim in a civil action under 35 U.S.C. § 282(b). This is the same claim construction standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny. Additionally, under the final rule, when construing a claim term in an IPR, PGR, or CBM, the PTAB will take into consideration any prior claim construction determination that has been made in a civil action, or a proceeding before the International Trade Commission (ITC), if that prior claim construction is timely made of record in that IPR, PGR, or CBM.

The USPTO received a total of 374 comments from individuals, corporations, associations, law firms, and law professors in response to its May 9, 2018, Notice of Proposed Rulemaking (NPRM). A significant majority of comments supported the proposed change. As noted in the rule package, the change will lead, among other things, to greater consistency and harmonization with the federal courts and the ITC and lead to greater certainty and predictability in the patent system. The final rule adopts the proposed rule language set forth in the NPRM, with a few changes for clarification purposes. Several comments questioned the proposed “retroactive” application of the rule. In response to these comments, the final rule will not be retroactively applied and instead will apply only to IPR, PGR, and CBM petitions filed on or after the effective date of the final rule, which is November 13, 2018.

The full text of the final rule is [published in the Federal Register](#) .

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