



NYIPLA Endorses Patent Office Change to Phillips Claim Construction Standard

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On May 9, 2018, the United States Patent and Trademark Office announced its proposed rulemaking in “Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board.” 83 Fed. Reg. 21,221 (May 9, 2018). The change would replace the broadest reasonable interpretation (BRI) standard for construing unexpired and proposed amended patent claims with the same standard applied in Article III federal district courts and International Trade Commission (ITC) proceedings, a standard known as the Phillips claim construction standard.

The proposed rule would adopt the narrower standard articulated by the Federal Circuit in *Phillips v. AWH Corp.*, where 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.” 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). Additionally, under the proposed approach, the Patent Office would construe patent claims and proposed claims based on the record of AIA proceeding, and take into account the claim language, specification, and prosecution history.

In response to the Patent Office’s notice of proposed rulemaking, the New York Intellectual Property Law Association (NYIPLA) recently submitted comments endorsing the Patent Office’s proposed changes.

For full article, please see [NYIPLA Endorses Patent Office Change to Phillips Claim Construction Standard](#)