

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HUAWEI DEVICE USA, INC., HUAWEI DEVICE CO. LTD., HUAWEI  
TECHNOLOGIES CO. LTD., HUAWEI DEVICE (DONGGUAN) CO. LTD.,  
HUAWEI INVESTMENT & HOLDING CO. LTD., HUAWEI TECH.  
INVESTMENT CO. LTD., HUAWEI DEVICE (HONG KONG) CO. LTD.

Petitioners

v.

CYWEE GROUP LTD.  
(record) Patent Owner

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Case IPR2019-00563  
Patent No. 8,552,978

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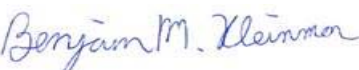
**DECLARATION OF BENJAMIN M. KLEINMAN IN SUPPORT OF  
REPLY TO OPPOSITION TO PETITIONERS'  
MOTION FOR JOINDER TO IPR2018-00563**

I, Benjamin M. Kleinman, am over eighteen years of age and would be competent to testify as to the matters set forth herein if called upon to do so.

1. Exhibit 1 is a true and correct copy of 83 FR 51340-01, 2018 WL 4916068, entitled “Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board” and dated October 11, 2018.

2. Exhibit 2 is a true and correct copy of the correspondence by which Huawei, on March 30, 2018, served its invalidity contentions in the district court litigation (*CyWee Group Ltd. v. Huawei Technologies Co., Inc., et al.*, E.D. Tex. Case 2:17-cv-00495-WCB-RSP) related to the patent at issue in this proceeding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct. Executed this 8<sup>th</sup> day of March, 2019 at San Francisco, California.

  
/s/ \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2019, I caused a true and correct copy of the foregoing **DECLARATION OF BENJAMIN M. KLEINMAN IN SUPPORT OF REPLY TO OPPOSITION TO PETITIONERS' MOTION FOR JOINDER TO IPR2018-00563** to be served via electronic mail as agreed by the Patent Owner on the following attorneys of record:

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*/s/ Kristopher L. Reed*  
\_\_\_\_\_  
Kristopher L. Reed (Reg. No. 58,694)

*Counsel for Petitioners*

71659925V.1

# EXHIBIT 1

83 FR 51340-01, 2018 WL 4916068(F.R.)  
RULES and REGULATIONS  
DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
37 CFR Part 42  
[Docket No. PTO-P-2018-0036]  
RIN 0651-AD16

Changes to the Claim Construction Standard for Interpreting Claims  
in Trial Proceedings Before the Patent Trial and Appeal Board

Thursday, October 11, 2018

AGENCY: United States Patent and Trademark Office, Department of Commerce.

**\*51340 ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO” or “Office”) revises the claim construction standard for interpreting claims in 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” or “Board”). In particular, the Office is replacing the broadest reasonable interpretation (“BRI”) standard such that claims shall now be construed using the same claim construction standard that is used to construe the claim in a civil action in federal district court. This rule reflects that the PTAB in an AIA proceeding will apply the same standard applied in federal courts to construe patent claims. The Office also amends the rules to add that any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission (“ITC”), that is timely made of record in an IPR, PGR, or CBM proceeding will be considered.

**DATES:**

**Effective Date:** The changes in this final rule take effect on November 13, 2018.

**Applicability Date:** This rule is effective on November 13, 2018 and applies to all IPR, PGR and CBM petitions filed on or after the effective date.

**FOR FURTHER INFORMATION CONTACT:** Michael Tierney and Jacqueline Wright Bonilla, Vice Chief Administrative Patent Judges, by telephone at (571) 272-9797.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

**Purpose:** This final rule revises the rules for IPR, PGR, and CBM proceedings that implemented provisions of the Leahy-Smith America Invents Act (“AIA”) providing for trials **\*51341** before the Office, by replacing the BRI standard for interpreting unexpired patent claims and substitute claims proposed in a motion to amend with the same claim construction standard that would be used to construe the claim in a civil action under [35 U.S.C. 282\(b\)](#). The rule adopts the same claim construction standard used by Article III federal courts and the ITC, both of which follow [Phillips v. AWH Corp., 415 F.3d 1303 \(Fed. Cir. 2005\)](#) (en banc), and its progeny. Under the final rule, the PTAB will apply in an AIA proceeding the same standard applied in federal courts to construe patent claims. This final rule also amends the rules to add a new provision which states that any prior claim construction determination in a civil action or proceeding

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