In the

Supreme Court of the United States

CUOZZO SPEED TECHNOLOGIES, LLC,

Petitioner,

v.

MICHELLE K. LEE, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF AMICUS CURIAE UNIFIED PATENTS INC. IN SUPPORT OF RESPONDENT

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are and the tha qua	er partes review (IPR) procedures a refinement of patent examination d reexamination processes all using BRI standard, which have for more n a century sought to improve patent dity, thus reducing problematic district rt patent litigation
	not intended to replace litigation in district court9
В.	IPR is a refinement of an earlier PTO post-grant procedure, <i>inter partes</i> reexaminations, which construed claims using the broadest reasonable interpretation (BRI)



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II.	Amendment is not more limited in IPRs than in other post-grant procedures, even in other adjudicative proceedings, and post-grant amendment is available by other routes at the U.S. Patent and Trademark Office (PTO)			
	A.	Claims may be modified in reexamination proceedings, which, like IPR, are post-grant proceedings at the PTO that allow limited amendment, and use BRI	15	
	В.	Interference proceedings, which are adjudicatory proceedings at the PTO that allow amendment (and on which IPR procedure was based), use BRI	17	
	С.	Patent reissue is a post-grant proceeding that likewise allows patentees to amend claims, and uses BRI	19	
	D.	Many factors have contributed to the limited number of amendments made to date in IPRs	19	
III.	When properly applied, the standards of construction in the PTO and in the courts are paths to the same result		21	



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22	Because the PTAB properly applied the BRI standard, Petitioner received the "plain and ordinary" claim interpretation it seeks	A.	
23	The PTO recognizes that BRI and "plain and ordinary meaning" are not alternatives	В.	
24	The U.S. Court of Appeals for the Federal Circuit recognizes that BRI and "plain and ordinary meaning" are not alternatives	С.	
25	Factors other than BRI can result in differences in claim construction in the PTO and in the courts	D.	
27	Claim construction procedures under the PTAB and in the courts differ only inconsequentially	Ε.	
30	ngress assumed BRI would continue to used by the PTO in post-grant patent occedings, as shown by the specific tute of the AIA it promulgated, to id claim-construction gamesmanship patentees	be pro sta avo	IV.
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CASES
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Bamberger v. Cheruvu, 55 U.S.P.Q.2d 1523 (B.P.A.I. 1998)
Blackberry Corp. v. Mobilemedia Ideas LLC, IPR2013-00016, Paper No. 31 (PTAB December 11, 2013)
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