



For Immediate Release

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### **Statement on the Rule Change for Patent Trial & Appeal Board**

(Washington, D.C., October 11, 2018) — The following statement may be attributed to James Edwards, Executive Director, Conservatives for Property Rights:

“The U.S. Patent & Trademark Office’s new rule replacing the claim construction standard in Patent Trial & Appeal Board proceedings is a good first step. PTO Director Andrei Iancu deserves credit for this common-sense, property rights-oriented move.

“The new standard for construing patent claims, the *Phillips* standard, will begin to rectify the unjust, inappropriate standard PTAB has been applying since its inception.

“Importantly, this rule mitigates another of PTAB’s multiple faults. PTAB is the outlier in claim construction, in contrast to Article III courts and the International Trade Commission, which use the *Phillips* standard. Now, PTAB must consider how a federal court or the ITC has determined how a patent claim should be read under *Phillips*.

“The BRI standard is appropriate during the patent examination phase; it’s entirely inappropriate once a patent is issued. Switching to the same standard used by other adjudicators, the ordinary meaning of terms describing a patent claim as understood by those skilled in the art at the time the patent was granted, ends the ignoring of changes in the state of the art since the patented invention was created.

“You know something’s horribly wrong when PTAB invalidates more than three-quarters of patent claims, as it has under biased practices and standards such as the outgoing ‘broadest reasonable interpretation’ standard. You know PTAB’s horribly tilted when a distinguished appellate judge calls these quasijudicial panels patent ‘death squads.’

“We hope this change in PTAB’s pro-infringer practices is only the first of many. After all, PTO shouldn’t be a tool for infringers to invalidate patents — to withdraw private property rights to one’s inventions.”

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\* Conservatives for Property Rights filed comments on this rulemaking, [here](#).