



THINK FORWARD

Claim Construction Under the BRI Standard: Can An "Incorrect" Interpretation Still Be "Reasonable"?

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On March 31, 2020, the Federal Circuit issued a 2-1 decision in [Deep Green Wireless LLC v. Ooma Inc., No. 19-1570](#) (Fed. Cir. Mar. 31, 2020) ("*Deep Green*"), upholding the Patent Trial and Appeal Board's ("PTAB's") construction of the term "incoming voice signals" under the broadest reasonable interpretation ("BRI") claim construction standard. In doing so, the majority clarified that a claim construction under the BRI standard does not need to be the most correct construction, so long as it is reasonable in view of the intrinsic record.

Brief Background

The *Deep Green* decision involved *inter partes* review ("IPR") proceedings related to a patent concerning telecommunications equipment. During the proceedings, the parties disputed whether the term "incoming voice signals" required voice signals incoming to the claimed "telecommunications devices," or whether it more broadly encompassed other "incoming" voice signals, e.g., signals incoming to the claimed "discrimination circuit." Applying the BRI standard, the PTAB adopted the broader proposed construction.

Federal Circuit Majority and Dissenting Opinions

After reviewing the intrinsic record, including the claims and specification, the majority acknowledged that the narrower construction rejected by the PTAB "might also be reasonable," and "may very well . . . better reflect[] the meaning of 'incoming' as understood in view of the networking technology disclosed in the specification." Slip Op. at 6 n.3. Nonetheless, the majority upheld the PTAB's broad construction because it was "reasonable," "not inconsistent with the specification's disclosure," and "reflects the broad scope of the claim." *Id.* at 7.

In her dissenting opinion, Judge Moore criticized the majority for sidestepping whether the PTAB's broad construction of "incoming voice signals" was actually correct – in her opinion, it was not. According to Judge Moore, the patent owner's narrower construction "is the only construction that accurately reflects the meaning of 'incoming' in view of the networking technology disclosed in the specification and claimed in the asserted claims." *Id.* at 14. Judge Moore expressed potential line-drawing concerns implicated by the majority opinion: "I am not certain exactly where the line is. How wrong must a construction be before it becomes unreasonable? For me, this one crosses that line." *Id.* at 14-15.

Key Takeaways

These opinions highlight the tension between construing claims under the BRI standard (used by the United States Patent and Trademark Office (“USPTO”),^[1] on the one hand, and under the *Phillips* standard (used in district court litigation), on the other. Although both claim construction standards require construing the claims in view of the same intrinsic evidence (the claim language, specification, and prosecution history if in the record), the differing legal standards can lead to materially different constructions. Unlike the *Phillips* standard, which purports to reflect a claim’s “plain and ordinary meaning” in view of the intrinsic record, the BRI standard merely requires a construction that is “reasonable” in view of that record. As the *Deep Green Wireless* decision makes clear, a construction may be upheld as “reasonable” even when the intrinsic record reveals other reasonable interpretations.

^[1] The patent office uses the BRI standard, for example, when examining new patent applications, in *ex parte* reexamination proceedings, and in IPR proceedings for petitions filed prior to November 13, 2018.

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