

Appeals to Reason: The Federal Circuit Reviews the Broadest
Reasonable Interpretation Standard
by Gerrit Winkel

The broadest reasonable interpretation (BRI) standard in patent examination is frequently the subject of dispute between patent practitioners, who often emphasize the “reasonable” requirement, and patent examiners, who may rely more on the term “broadest.”

Within the last 14 months, several decisions by the Federal Circuit have clarified how the BRI standard should be applied in patent prosecution.^[1] In these cases, the court emphasizes the importance of using the ordinary and customary meaning of claim terms that is consistent with the specification and drawings, as they would be interpreted by one of ordinary skill in the art. In particular, the court’s approach in these cases seems to emphasize the importance of the patent disclosure (claims, specification and drawings) above other sources in the determination of how broad of an interpretation is reasonable.

In [Microsoft Corporation v. Proxyconn, Inc.](#), the Federal Circuit reviewed the USPTO Patent Trial and Appeal Board’s (PTAB) interpretation of three clauses from the claims, and in each instance the court relied wholly on the disclosure in determining the appropriate scope of the claims. In the representative first example, the claim at issue was written to a system for data access in a data-switched network. Components of the system were described as a gateway “connected to the network in such a way that network packets sent between at least two other computers pass through it” and a caching computer connected to the gateway. The PTAB had concluded that the phrase “two other computers” could be interpreted to mean any computer, including the claimed caching computer.

In reversing the PTAB’s decision the court looked first to the claim language and then to the specification, noting that the “two other computers” were repeatedly identified separately from the caching computer in both the written description and the figures. The court summarized its reasons for reversing the PTAB stating that the PTAB’s construction of the terms “does not reasonably reflect the language and disclosure of the . . . patent.”

The more recent case, [Cutsforth, Inc. v. Motivepower, Inc.](#), illustrates a situation when the plain meaning of the terms is at issue. Here, the PTAB argued that the plain language of the claim limitation, “a projection extending from the mounting block,” encompassed a structure

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that recedes into a mounting block. Cutsforth contended that the ordinary and plain meaning of a projection requires that it jut out of its surroundings and, in support of its interpretation, provided the general dictionary definition of a projection as an “extension beyond something else.”

In reviewing the PTAB decision, the court found Cutsforth’s definition to be consistent with both the plain language of the claims (requiring a projection that “extends from the mounting block”) and the drawings. In contrast, the court found the PTAB’s interpretation of the claim language to be unreasonably broad because it was contrary to the ordinary meaning of the terms and lacked support in the disclosure. In particular, the court noted that there was no alternative definition of “projection” presented in the specification to justify a departure from the ordinary definition presented by Cutsforth and illustrated in the drawings.

Just two months prior to its decision in Cutsforth, the court reviewed the PTAB’s determination of the plain meaning of “circumferential ridges” under the BRI standard in [Trivascular Inc. v. Samuels](#). Petitioner Trivascular argued that the PTAB’s interpretation of the terms as a raised strip disposed about the circumference of the outer surface of an inflatable cuff was unreasonably narrow in view of a common topological definition of “ridge,” which they alleged would include discontinuous peaks arranged in a circumferential pattern. In rejecting Trivascular’s interpretation as unreasonably broad, the court noted that “construing individual words of a claim without considering the context in which those words appear is simply not ‘reasonable.’”

Instead of adopting Trivascular’s definition, the court upheld the PTAB’s use of a general purpose dictionary definition for “ridge” as a raised strip. The court further explained that this more commonly used definition was more consistent with evidence from the written description and the drawings, while the definition of a topographical ridge was not.

[PPC Broadband, Inc. v. Corning Optical Commc’ns RF, LLC](#) presented a closer, but similar, question for the court. Here the PTAB construed the broadest reasonable interpretation of “reside around” to be “in the immediate vicinity of; near” by presenting a definition from a

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general use dictionary. In reversing the PTAB's decision, the court noted that the PTAB had selected the fourth listed dictionary definition for "around," and appeared to simply have reviewed the dictionary definitions of the term and selected the broadest.

The court instructed that "the fact that 'around' has multiple dictionary meanings does not mean that all of these meanings are reasonable interpretations in light of the specification." Rather, the context of the patent as found in the written description and the figures serve to inform the meaning of "reside around." Indeed, although the definition "in the vicinity of; near" was not explicitly contrary to the teachings of the disclosure, both terms "around" and "near" were used in the disclosure and "around" was always used to relate to encircling or surrounding and never to mean "near" or "in the vicinity of." As such, the court determined that the fourth listed dictionary definition was inconsistent with the specification and unreasonably broad.

Unfortunately, the appropriate interpretation of claim language is not always a matter of picking a consistent definition from a dictionary. In [Dell Inc. v. Accelaron, LLC](#) the claim language recited "a microcontroller module and a dedicated ethernet path, wherein the dedicated ethernet path is separate from a switched fast ethernet connection and provides the microcontroller module with a connection to remotely poll the CPU module." The dispute centered on whether the claim language required that the microcontroller be configured for remote polling or whether it would be enough that an ethernet path is capable of providing a connection for polling, as concluded by the PTAB.

The court determined that accepting an interpretation that only required that an ethernet path be capable of providing a connection for polling would deny "any substantial meaning to the limitation 'remotely poll,'" and would be in conflict with "the claim-construction principle that meaning should be given to all of a claim's terms." The court found additional clarification in the written description and dependent claims, noting that the microcontroller was frequently described as engaging in remote polling and must therefore be configured for remote polling.

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Most recently, the Federal Circuit reviewed [SAS Institute, Inc. v. Complementsoft, LLC](#) where the PTAB interpreted claim language absent the benefit of an ordinary meaning or a definition in the specification. In fact, the phrase at issue, “graphical representations of data flows,” did not appear at all in the written description. In reviewing the specification, however, the PTAB identified the extensively described “data flow diagrams” as representing the claimed “graphical representations of data flows.” In doing so, the PTAB reasoned that one skilled in the art would review both the claims and the specification and find no reason to “conclude that the patentee meant something different between the terms.”

Therefore, the specification’s definition of “data flow diagrams” as “icons depicting data processing steps and arrows to depict the movement of data through the source code” was determined to be the appropriate construction of the claimed “graphical representations of data flows.” The court upheld the PTAB’s interpretation and reiterated that “even under the broadest reasonable interpretation, the Board’s construction cannot be divorced from the specification and the record evidence, and must be consistent with the one that those skilled in the art would reach.”

In each of the cases described above, the Federal Circuit has appealed to the patent disclosure (including the claims, specification and drawings) in determining whether an interpretation is reasonable. Taken together, the court’s guidance in these cases appears to indicate that to the Federal Circuit any interpretation inconsistent with, or unsupported by, the specification is unreasonable. How these cases impact initial proceedings remains to be seen, as patent examiners have the final say absent an appeal, but these cases should provide some much needed support for those arguing for more reason in patent examination.

[1] It should be noted that each of the cases described concerned the application of the BRI standard in inter partes review (IPR), however, the Federal Circuit in [In Re Cuozzo Speed Technologies, LLC](#) makes it clear that the BRI standard applied in IPR proceedings is the same standard applied during initial examination.